LAW-ENFORCEMENT HANDBOOK

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REGION 5

UNITED STATES
DEPARTMENT OF AGRICULTURE
FOREST SERVICE
1938

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S. B. SHOW, Regional Forester

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CALIFORNIA REGION

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LAW ENFORCEMENT ON NATIONAL FORESTS

CALIFORNIA REGION

FOREWORD

The Forest Service depends for its success and usefulness upon what the public thinks of it. What the public thinks depends upon the character of the service rendered by forest officers and their ability to make that service known.

Good manners in dealing with the public, supplemented by a thorough knowledge of your job, are the two essential things that will sell you to the public. When you sell yourself to the public, you are selling the Forest Service.

I commend this handbook as an aid to a better understanding and improved handling of future law enforcement cases. Its contents have been carefully selected from the best information available at this time. It must be thoroughly studied and understood in order to be of any benefit to you and to make law enforcement effective on the national forests. If, in the future, experience and practice suggest improved methods, such information should be recorded and summarized so that it may be useful to those who are or will be engaged in this work.

S. B. Show,
Regional Forester.

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Chapter I.—GENERAL INSTRUCTIONS

This handbook is compiled as an aid to forest officers in the proper handling of law-enforcement cases and contains the revised instructions for law enforcement on the national forests of the California region.

These instructions are supplemental to the National Forest Trespass Manual. Forest officers will be held accountable for familiarity with them and for action resulting from investigations. The education of all short-term men in the search for and preservation of clues is also desirable, since guards will often be the first at the scene of a trespass, especially fire.

GOVERNMENT is the agency which society sets up for the enforcement of law. LAW may be defined as rules of conduct adopted for the governing of society.

Laws have been passed by Congress which prohibit certain acts within the boundaries of the national forests, and State legislatures have passed laws prohibiting doing certain things within the States, all of which are designed to protect the rights and privileges of the people of the United States.

Congress has given the Secretary of Agriculture the duty of administering the national forests, which implies the duty to enforce such laws as have been or may be passed, and the enforcement of the regulations which may be required. The Secretary has broad discretionary powers in the administration of the national forests, but this discretionary power does not go so far as to allow the Secretary to determine whether certain laws shall or shall not be enforced. While in theory the executive officer has no discretion but to enforce the will of the lawmakers, in practice there are few executive officers who do not exercise to some extent discretionary power in regard to the method which they use in the enforcement of the laws. Most of the differences in ideas and practice regarding law enforcement arise through

local differences and conditions, making it a question as to what is the best way to administer the laws.

Cooperating agencies should be urged to enforce the laws. Local forest officers should establish cordial cooperative relations with peace officers of county and State, preferably by personal contact.

It is necessary to proceed on the basis of what seems best for the enforcement of laws so as to fulfill our responsibility in the administration of the forests and for the suppression of those acts and practices calculated to injure the public welfare.

The purpose of law-enforcement and trespass action, among other things, is to prevent man-caused fires and to collect fire-fighting costs and damages resulting from all actionable fires. One of the most difficult administrative situations arises when forest officers fail to recognize those facts which form the best foundation for prosecuting a law-enforcement case. A study of the law-enforcement handbook and a review of fire-trespass cases which have been handled on a forest will prove most helpful in prosecuting future cases.

It should be thoroughly understood that fire-law enforcement has equal importance with fire suppression. This principle should be applied to the extent that fact determination is commenced at once. Clue investigations and fact recording should proceed concurrently with fire suppression.

It is mandatory that a thorough investigation of every man-caused fire be made by the district ranger in charge of the district unless that duty is specifically delegated to some other officer. The primary responsibility for successful work along this line upon any forest rests upon the shoulders of the supervisor. It is a part of his administrative responsibility and must be planned for and executed as are the other major activities of his forest. It is his duty to see that all subordinates, field and staff, who in the course of their duties are required to enforce forest laws and regulations be fitted for the work and instructed in their duties and responsibilities, and to see that every effort is made in every case to apprehend all violators of the laws and regulations pertaining to the national forests.

Primarily as an aid to members of the temporary protection force, who do not ordinarily have access to the trespass section of the National Forest Manual,

certain pertinent parts of that manual are herewith reproduced for information and ready reference:

THE NATIONAL FORESTS

MAJOR PURPOSES

(N. F. M., p. 3–A)

"National forests have for their object to insure a perpetual supply of timber, to preserve the forest cover which regulates the flow of streams, and to provide for the use of all resources which the forests contain in the ways which will make them of largest service. Largest service means greatest good to the greatest number in the long run. It means conservation through use, with full recognition of all existing individual rights and with recognition also that beneficial use must be use by individuals; but without a sacrifice of a greater total of public benefits to a less. In other words, the forests are to be regarded as public resources to be held, protected, and developed by the Government for the benefit of the people."

THE FOREST SERVICE

ORGANIZATION

(N. F. M., p. 4–A)

"Forest officers are agents of the people. They must answer all inquiries fully and cheerfully, and be even more prompt and courteous in the conduct of forest business than in private business. They must, of course, obey instructions and enforce regulations without fear or favor; they must not allow personal or other interests to weigh against the permanent good of the forests; but it is no less their duty to encourage legitimate enterprise and to assist the public in making use of the resources of the forests. They must make every effort to prevent misunderstanding and violations of forest regulations rather than to correct mistakes after they have been made. Information will be given tactfully and violations prevented by friendly advice rather than by offensive warnings.

"The national forests contain upward of 170,000,000 acres and are scattered through 39 States and 2 Territories (Alaska and Puerto Rico) * * *. The re-

sulting wide range of physical, industrial, and social conditions calls for a high degree of flexibility of organization.

"The position of district ranger, forest supervisor, regional forester, and Forester (Chief, Forest Service) constitutes the framework or line of pivotal positions which guide and control the administrative and protective organization of the Forest Service. These are the key positions of the organization and the men who occupy them largely determine each in his own sphere what the Forest Service will do and be."

PUBLIC RELATIONS

(N. F. M., p. 3–P)

"Satisfactory relations with the public are just as important as right handling of forest resources. They increase use of the forests, as well as facilitate their administration and protection; they inform the public in the methods of forestry, and thus help bring about its general application; and they enable the work done to be more accurately appraised and judged by the people to whom, collectively, the forests belong. Maintenance of right relations with the public is, therefore, one of the primary duties of forest officers.

OBJECTS OF WORK

"The objects to be sought are (1) the increase of 'goodwill' as a business asset of the national-forest enterprise; (2) the diffusion of knowledge of forestry; and (3) intelligent public judgment of policies and performance. The Forest Service courts the fullest possible understanding of what it is trying to do and accepts accountability for doing the right thing economically and efficiently. * * *

"The most outstanding immediate need for goodwill is to make protection easier, cheaper, and more effective. Unless held down through a change of public attitude and practice, man-caused fires must increase proportionately with development and use. To improve the organization, equipment, and methods through which fires are discovered and put out is not enough. A no less necessary task is to build up sentiment in favor of protection and bring the public to prevent fires from starting. Without this, in the

long run, detection and suppression cannot win out against man-caused fires. By far the greatest responsibility of public relations in national-forest administration is to handle successfully its ends of the fire problem. Good will is an invaluable aid in accomplishing this task."

TRESPASS

(N. F. M., p. 3–T)

"Trespass on the national forests is investigated and settled as a deterrent and protective measure as well as to secure compensation for the loss suffered by the United States. By bringing the trespasser to account either by requiring compensation for the damage done or by the imposition of a penalty, or both, an example is given of what may be expected if, through inadvertence, lack of ordinary care, gross negligence, or willful purpose, any person encroaches upon, interferes with, damages, or destroys property of the United States, or violates any of the laws or regulations designed to protect such property. Diligence in the apprehension of trespassers by forest officers is the surest way to reduce trespass to a minimum. Therefore, no case should be dropped because of lack of evidence until every means of fixing responsibility has been exhausted."

Chapter II.—DUTIES

GENERAL

Law enforcement is a primary duty of all forest officers. The special law enforcement work will be confined mostly to investigation and the working up of its results for use in criminal court actions; but minor cases in justices' courts, or where settlement by payment of cash or damages is made, may have to be conducted by rangers or other investigators.

REPORTS

An informal report (oral or written) of the occurrence of the offense shall be made immediately upon its discovery, or as soon thereafter as communication can be established or the work permits, to the supervisor of the forest for his information. This is especially important because of decisions which the supervisor or regional forester may have to make respecting civil or administrative actions. Further, special reports shall also be made as called for by superior officers.

ASSISTANCE

If too many fire or other cases occur for a ranger to handle alone, or if difficult cases develop in which he desires assistance, help should be immediately requested from the supervisor or from the regional office.

District rangers will be expected to make every possible effort in this work, but they should not hesitate to call for additional help if they need it. Constantly recurring fires or other offenses will indicate that local action must be stiffened or help requested.

SUPERVISION

Supervisors will be responsible for the attitude of forest officers to law-enforcement work and for its vigorous prosecution on their forests. Inspection and

check must be maintained on the investigative work done by each man. Not every man is adapted to this work, and assignments to it should be subject to selection. Investigative work, however, should be judged on its merits; failure to convict must not always be considered the investigator's fault. If a man fails to get the results which it is reasonable to expect, it may be desirable to let him work on a case or two with an experienced man before trying more cases alone, rather than to displace him. He should not ordinarily be given charge of other cases until he has had such coaching.

In all important trespass cases necessitating an investigation, a file must be set up and all developments of the case recorded therein for future reference. This is particularly essential when a case for some good reason is left in an unfinished state. All information contained in notebooks should be typed and transferred to the file before the investigation is discontinued. This will eliminate the necessity of covering the same ground in the event the investigation is continued by another investigator at a later date.

Chapter III.—GENERAL LINES OF WORK

FIRES

Law enforcement is concerned with man-caused fires. Until fires of unknown origin can be proved otherwise, they must, with respect to enforcement investigation, be viewed as man caused. At all such fires, the ranger has two duties: (1) To see that the fire is put out, and (2) to see that every possible measure is taken to detect the person responsible.

Investigation must be started immediately, before clues in the vicinity of the fire are obliterated. However, this does not mean that suppression of the fire can be neglected. Careful planning and scheduling of both lines of work will be necessary, first by the supervisor as a forest policy, then by the ranger in charge of each district. Because investigation is new and not well understood by the field men, its direction must be given careful attention by all administrative officers, and fire plans must be so arranged as to permit of pushing both investigation and suppression simultaneously. Short-term men must be assigned with reference to the requirements of investigation and their capacity for the work, and should be instructed as provided on page 2 of this handbook.

FISH AND GAME

Regulation T–7 provides a means for vigorous action in fish and game management. These are to be recognized as national assets which should be conserved on the national forests just as timber or forage is conserved. The Forest Service policy regards as legitimate such use of a resource as is consistent with maintenance of supply, but as illegitimate any use in excess of that requirement. This raises enforcement of the fish and game laws and cooperation with State authorities in such enforcement from a matter of incidental goodwill to one of direct duty. A more radi-

cal change in community sentiment must be wrought to give thoroughgoing game-law enforcement the backing that is now accorded fire-protective measures; but a clear understanding and impartial enforcement of the Service policy by every forest officer will go a long way toward securing the desired result.

GRAZING

Enforcement of grazing regulations has suffered in many cases from the same hesitancy in respect to community goodwill which affected fire-law enforcement in early days. Stockmen prefer a ranger who is able to give them proper protection and also to make them live up to the requirements of their permits. The fearless and impartial enforcement of grazing regulations may be expected to bring gains in community esteem and confidence in the ability of forest officers to administer the forests that will be comparable to the advatages which are resulting from fire-law enforcement.

Grazing enforcement must bear upon cattle straying over allotment boundaries as well as upon sheep, and must not overlook violations of the requirements of cattle salting and sheep bedding when incorporated in the stipulations of a grazing application or permit. Much of this work is purely administrative and will not come to the law-enforcement investigator. But when grazing trespass is consistently gone after by all forest officers, many unreported cases will probably develop, which may require investigative work. Investigators of grazing trespass must be particularly careful to obtain exact and, if possible, first-hand facts with respect to numbers and ownership of stock in trespass, exact location with respect to boundaries of national forest land, exact terms of permit violated (if any), and all other essential points.

The presence, movement, or transportation of stock or other animals within national forests closed by reason of foot-and-mouth or other contagious or infectious disease of animals, is prohibited by regulation T–9.

OTHER TRESPASSES

Timber, occupancy, property, and other trespasses on the national forests may require law-enforcement

investigation. In timber trespass, however, the facts are usually plain, and action is seldom criminal. Law-enforcement investigation, therefore, will seldom be required unless the identity of the trespasser or the time and manner of committing the trespass are in doubt.

PREVENTION

In all law-enforcement efforts, prevention propaganda should not be forgotten. An ounce of prevention is still worth a pound of cure. Every stockman is not to be held an incendiary, nor must such an impression be permitted to arise. Warning should be given, however, that every incendiary will be caught, if possible, and punished; but, at the same time, appreciation of good work done should be conveyed to stockmen and all other cooperators. Friendly relations should be established with campers, in the course of which unobtrusive warnings of the danger of fire and advice on how to avoid it can be extended. This will make friends for the Service instead of enemies, and strengthens its position in every way.

Chapter IV.—AUTHORITY

FEDERAL

Forest officers have authority, derived from Federal statutes, to enforce Federal laws or regulations of the Department of Agriculture within national forests (act March 3, 1905 (33 Stat. 873) ; sec. 559, title 16, U. S. C., Feb. 6, 1905 (33 Stat. 700) ; sec. 559, title 16, U. S. C.).

All persons employed in the forest reserve and National Park Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the forest reserves and national parks, and any person so arrested shall be taken before the nearest United States commissioner, within whose jurisdiction the reservation or national park is located, for trial; and upon sworn information by any competent person any United States commissioner in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations.

The authority to cooperate with other Federal bureaus and the State along certain lines is contained in the act of May 23, 1908 (35 Stat. 251) :

> And hereafter officials of the Forest Service designated by the Secretary of Agriculture shall, in all ways that are practicable, aid in the enforcement of the laws of the States and Territories with regard to stock, for the prevention and extinguishment of forest fires, and for the protection of fish and game, and, with respect to national forests, shall aid the other Federal bureaus and departments, on request from them, in the performance of the duties imposed on them by law.

STATE

If forest officers have State deputy fire warden and game warden appointments, they possess under the statutes of the State the authority, protection, and privileges of any officer of the State of California. All

rangers should be certain that they have deputy State fire warden and fish and game warden appointments. If not, they should make request for them through the supervisor. Forest officers will not ordinarily accept local deputizations as peace officers without first having obtained approval of the regional office.

Violations of law touching private rights in national forest communities are not ordinarily subject to police action by forest officers; but such officers have the right of any citizen to lay facts before the proper authorities or to advise others how to do so. Action in the latter direction, however, obviously demands caution and judgment. Except in extreme emergency, the case should be reported to the assistant to the solicitor for his review.

ADVICE AND BACKING

When in doubt, especially on legal questions, ask for advice through the supervisor. However, circumstances may sometimes require immediate action and not permit of delay. When a ranger acts on the best judgment at his command, his actions and recommendations will be backed by the regional office. Legal help for conduct of all important court cases will be provided on request.

Chapter V.—LAWS AND REGULATIONS AND THEIR APPLICATION

An investigator cannot know what he must prove unless he understands what constitutes a crime according to the law in respect to the subject in hand. Where more than one course is possible, he must be able to advise intelligently which action should be taken. He should also have a reasonable degree of familiarity with what is acceptable in court as evidence, how it must be prepared and presented, and just what he can and cannot do in dealing with suspects and trespassers. Even though he does not conduct the case in court, the investigator will find this knowledge useful from his interpretation and use of his first clue onward.

FIRE

FEDERAL FIRE LAW

The Federal fire law, act of March 4, 1909 (35 Stat. 1098), 18 U. S. C. A. 106, 107, 108, is as follows:

SEC. 52. Whoever shall wilfully set on fire, or cause to be set on fire any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 53. Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both (as amended by act June 25, 1910, 36 Stat. 855, 557).

SEC. 54. In all cases arising under the two preceding sections the fines collected shall be paid into the public-school fund of the county in which the lands where the offense was committed are situated.

Conspiracy

The act of March 4, 1909 (35 Stat. 1096), defines the offense of conspiracy as follows:

Sec. 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

It will be seen that conspiracy involves premeditation, to which more than one person is a party. An overt act is also necessary to complete the offense of conspiracy, but it is not necessary that the conspiracy be consummated. For example, going on a national forest to set a fire in accordance with a conspiracy so to do, if this can be proved, is sufficient, even though the conspirators were later frightened away and did not set it. It will be observed that the penalties for the offense of conspiracy may be greater than for a violation of the Federal fire laws, which the conspiracy may have been aimed to commit. Liability for a conspiracy to commit an offense against the United States cannot be escaped because the conspirator has actually committed the substantive offense at which the conspiracy aimed. Moreover, all the conspirators to a crime are liable, even though only a part of them participated in its actual commission. The value of the conspiracy law lies in its inclusive sweep as to offenders under its terms and its heavy penalties in the aggravated cases which conspiracy usually involves.

Perjury

The act of March 4, 1909 (35 Stat. 1111) provides as follows:

Sec. 125. Whoever having taken an oath before a competent tribunal officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, shall wilfully or contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

SEC. 126. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

This statute is often of great usefulness in dealing with a recalcitrant suspect, even though its specific action be not invoked.

FIRE REGULATIONS

Under the acts of June 4, 1897 (30 Stat. 11) and February 1, 1905 (33 Stat. 628), the Secretary of Agriculture is authorized to make rules and regulations to preserve the national forests from destruction, and any violation of such rules and regulations is punishable by a fine of not more than $500 or imprisonment for not more than 12 months, or both, as provided for in the act of June 4, 1888 (25 Stat. 166).

Regulation T–1 provides as follows:

Reg. T–1.—The following acts are prohibited on lands of the United States within national forests:

(*a*) Setting on fire or causing to be set on fire any timber, brush, or grass, except as authorized by a forest officer.

(*b*) Building a campfire in leaves, rotten wood, or other places where it is likely to spread, or against large or hollow logs or stumps, where it is difficult to extinguish it completely.

(*c*) Building a campfire in a dangerous place, or during windy weather, without confining it to holes or cleared spaces from which all vegetable matter has been removed.

(*d*) Leaving a campfire without completely extinguishing it.

(*e*) Building a campfire on those portions of any national forest which have, with the approval of the regional forester, been designated by the respective supervisors thereof without first obtaining a permit from a forest officer.

(*f*) Using steam engines or steam locomotives in operations on national forest lands under any timber-sale contract, or under any permit, unless they are equipped with such spark arresters as shall be approved by the forest supervisor, or unless oil is used exclusively for fuel.

(*g*) Disturbing, molesting, interfering with by intimidation, threats, assault, or otherwise, any person engaged in the protection and preservation of a national forest.

(*h*) Smoking during periods of fire danger publicly announced by the regional forester upon such areas as may be designated by him, which may include roads and trails and improved camping grounds but shall not include improved places of habitation.

(*i*) Going or being upon those portions of the national forest which may be designated by the regional forester as areas of fire hazard, except with permit issued by the local forest officer, but no permit shall be required of any actual settler going to or from his home.

(*k*) Using an automobile not provided with exhaust and muffler equipment in efficient condition on any road over lands of the United States within national forests, or on

any road acquired or maintained by the Secretary of Agriculture for the protection and administration of the national forests, which shall have been posted by the Secretary of Agriculture as closed to such automobiles.

(*l*) Carrying a firearm, except by authorized Federal or State officers, upon any portion of any national forest designated by the regional forester in time of fire or other public emergency.

(*m*) The throwing or placing of a burning cigarette, match, pipe heel, firecracker, or any ignited substance in any place where it may start a fire; and the discharging of any kind of fire-works on any portion of a national forest closed by order of the regional forester to the discharging of fireworks.

(*n*) Going or being upon those portions of the national forests which may be designated by the regional forester as areas of fire hazard, unless registered previously to entering upon such areas, at points designated by the local forest officer, but such registration shall not be required of any actual settler going to or from his home.

(*o*) Going or being upon any portion of a national forest designated by the regional forester as an area of fire hazard without being equipped with fire-fighting tools, such as axes, shovels, and similar implements of the kind and number prescribed by the regional forester, when means of conveyance, such as an automobile or pack outfit are available for carrying such tools. In the case of a camping party the person in charge will be held responsible for any violation hereof.

Reg. T–2.—Hereafter, provided Congress shall make the necessary appropriation or authorize the payment thereof, the Department of Agriculture will pay the following rewards:

First. Not exceeding $500 and not less than $100 for information leading to the arrest and conviction of any person on the charge of willfully and maliciously setting on fire, or causing to be set on fire, any timber, underbrush, or grass upon the lands of the United States within or near a national forest.

Second. Not exceeding $300 and not less than $25 for information leading to the arrest and conviction of any person on the charge of building a fire on lands of the United States within or near national forest, in or near any forest timber or other inflammable material, and leaving said fire before the same has been totally extinguished.

Third. All officers and employees of the Department of Agriculture are barred from receiving reward for information leading to the arrest and conviction of any person or persons committing either of the above offenses.

Fourth. The Department of Agriculture reserves the right to refuse payment of any claim for reward when, in its opinion, there has been collusion or improper methods have been used to secure the arrest and conviction thereunder, and to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances entitle the claimant to a reward on each such conviction.

These rewards will be paid to the person or persons giving the information leading to such arrests and convictions upon presentation to the Department of Agri-

culture of satisfactory documentary evidence thereof, subject to the necessary appropriation, as aforesaid, or otherwise, as may be provided by law.

Applications for reward, made in pursuance of this notice, should be forwarded to the Forester, Washington, D. C.; but a claim will not be entertained unless presented within 3 months from the date of conviction of an offender.

PENALTIES

All offenses for which penalties are prescribed under sections 52, 37, 125, and 126 are felonies, while those under section 53 and the departmental regulations are misdemeanors.

FEDERAL JUDICIAL INTERPRETATIONS

The offense of setting fire to timber, etc., on the public domain may be committed, even if the fire is started on adjoining private land. Judge Wellborn, United States District Court for Southern California, in his charge to the jury in the case of *The United States* v. *Henry Clay* (fire trespass on the Cleveland National Forest) stated as follows:

> You are further charged that it is immaterial whether the fire of October 19, 1909, mentioned in this indictment, originated on private land, if it was set willfully, and if, in the course of nature and in view of all the surroundings, the said fire would reasonably be expected to be communicated to the public domain. A man has no lawful right to set fire to his own property, if he has reason to believe or intends that such fire will be communicated to the property of others and destroy it.

With respect to the meaning of the word "willful" in section 52, above quoted, Judge Whitson's instructions (United States District Court for Colorado) to the jury in the case of *United States* v. *Fisher* (fire trespass on the Colville National Forest) were as follows:

> And, as to the third count, whether he willfully set on fire or caused to be set on fire the timber, slashings, or grass there growing. It is charged in the third count that the act was maliciously done; but it is not necessary, under the statute, that malice be shown. It is necessary to show that the act must have been willful; that is, intentional. Not with intent, however, to burn the public domains and destroy property, but purposely built the fire or purposely left it unattended or purposely failed to extinguish it. The purpose does not apply to the result, but to the acts charged; for one willfully, knowingly doing an act is presumed to intend the consequences which naturally may be expected to flow from such an act.

The Supreme Court in *U. S.* v. *Alford* (274 U. S. 264) interpreted section 53 of the Penal Code:

1. In the act of June 25, 1910, providing that "whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain, or upon any Indian reservation * * * shall, before, leaving said fire, totally extinguish the same; and whoever shall fail to do so shall" be punished, etc., the words "upon the public domain" are to be referred to the words immediately preceding, viz, "forest, timber, or other inflammable material." so that the statute applies where the fire is on private lands, but "near" to inflammable grass on the public domain (p. 266).
2. The act, so construed, is constitutional; for Congress may prohibit the doing of acts upon privately owned lands that imperil the publicly owned forest (p. 267).
3. The word "near" is not too indefinite (p. 267).

INDIAN RESERVATIONS

Forest officers have no jurisdiction over fires wholly on Indian reservations; but Indians setting fires or causing fires to be set, whether on reservations or not, which fires spread to national forest lands, are subject to the above laws in respect to these offenses. If it is desired to arrest an Indian on a reservation for such a fire, this should be done through the Indian agent.

COMMANDEERING PROPERTY

It is doubtful if there is statutory authority by which an officer can commandeer property, such as an automobile, along with the personal assistance required by the State fire law, either in pursuing a criminal or fighting fire. Such action, which is common by city police, may get by, but forest officers should not attempt such tactics.

STATE FIRE LAWS (CALIFORNIA)

The California State law relating to forest fires (sec. 384 of the Penal Code as amended by the 1937 session of the legislature) provides as follows:

SEC. 384. MISDEMEANORS

An act to amend section 384 of the Penal Code of the State of California by amending subdivision 11 thereof, relating to the refusal of a person summoned to render assistance in combating forest, brush, or grass fires when ordered so to do by certain county officers. (Approved by the Governor May 4, A. D. 1937.)

The people of the State of California do enact as follows:

SECTION 1. Section 384 of the Penal Code is hereby amended to read as follows:

384. Any person who shall willfully or negligently commit any of the acts hereinafter enumerated in this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment:

(1) Setting fire, or causing or procuring fire to be set to any forest, brush, or other inflammable vegetation growing on lands not his own, without the permission of the owner of such land or lighting, maintaining, or using a campfire upon any brush, grass, or forest covered land which is the property of another between April fifteenth and December first of any year without first obtaining a written permit from the owner, lessee, or agent thereof, unless he possesses a written campfire permit duly issued by or under the authority of the United States Forestry Service for use in a territory under the jurisdiction of said United States Forest Service adjacent to said property of another and is fully complying with all the rules and regulations of the United States Forestry Service: *Provided, however*, That the area north of thirty-eight degree north latitude, and west of one hundred twenty-two degrees west longitude, is hereby declared to be an area of early seasonal rainfall, and the provisions of subdivisions 1, 2, and 10 of this section shall apply to such area only between May first, and October thirty-first, of each year.

(2) Allowing a fire kindled or attended by him to escape from his control or to spread to the lands of any person other than the builder of such fire without using every reasonable and proper precaution to prevent such fire from escaping.

(3) Burning brush, stumps, logs, fallen timber, fallows, slash, or grass, brush or forest covered land or any other inflammable material or blasting with dynamite, powder, or other explosives, or setting off fireworks of any kind in forest, fallows, grass, or brush covered land, either on his own land or property of another, between April fifteenth and December first of any year, unless such burning is done under a written permit from the State forester or his duly authorized agent, and in strict accordance with the terms of the permit: *Provided, however*, That no written permission shall be necessary to burn inflammable material in small heaps or piles, where the fire is set on a public road, in dooryard premises, corrals, gardens, or plowed fields, at a distance not less than one hundred feet from any woodland, timber, or brush covered land or field containing dry grass or other inflammable material: *And provided, also*, That there shall be at least one adult person in actual attendance and in charge of such fire at all times during its burning.

(4) Setting a backfire, or causing such backfire to be set, except under the direct supervision or permission of a State or Federal forest officer, unless it can be established that the setting of such backfire was necessary for the purpose of saving life or valuable property.

(5) Throwing or placing any lighted cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may cause a fire, in any place where such lighted cigarette, cigar, match, ashes, or other flaming or glowing substance, or other substance or thing, may directly or indirectly start a fire.

(6) Throwing from a moving vehicle any lighted cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may cause a fire.

(7) Using any logging locomotive, donkey, or threshing engine, or any other engine or boiler, in or near any forest, brush, grass, grain, or stubble land, unless he shall prove upon the trial, affirmatively, that such engine or boiler used by him was provided with adequate devices to prevent the escape of fire or sparks from smokestacks, ashpans, fireboxes, or other parts and that he has used every reasonable precaution to prevent the causing of fire thereby.

(8) Harvesting grain or causing grain to be harvested by means of a combined harvester, header, or stationary threshing machine, or baling hay by means of a hay press, unless he shall keep at all times in convenient places upon each said combined harvester, header, or stationary threshing machine, or hay press, fully equipped and ready for immediate use, two suitable chemical fire extinguishers, approved by the Underwriters' Laboratories, each of the capacity of not less than two and one-half gallons.

(9) Operating or causing to be operated any gas tractor, oil-burning engine, gas-propelled harvesting machine or autotruck in harvesting or moving grain or hay, or moving said tractor, engine, machine, or autotruck in or near any grain or grass lands, unless he shall maintain attached to the exhaust on said gas tractor, oil-burning engine, or gas-propelled harvesting machine an effective spark-arresting and burning carbon-arresting device.

(10) Use of steam-operated engines in woods. Using or operating by any person, corporation, or company between May first and October thirty-first of each year, any wood or coal-burning steam-operated donkey or stationary engine in any woods operation, located in any forest or brush covered land without first clearing away all inflammable material, including snags, from any area of at least one hundred feet in radius about such engine, unless substitute fire prevention measures are adopted that meet with the approval of the State forester: *Provided*, That loaders may be operated where inflammable material has been removed from an area of twenty-five feet radius from machine, and snags have been felled and tops of rotten wood covered with mineral earth within a radius of fifty feet from such loader.

Using or operating by any person, corporation, or company between May first and October thirty-first of each year any gas, steam, or electrically driven donkey or stationary engine in any woods operation located in any forest or brush covered lands, without providing and maintaining at all times, for fire-fighting purposes only, a suitable box containing sufficient tools to equip ten men for fire fighting, among which tools there shall be not less than five shovels and two axes at each engine so operated. It is provided, however, that when two or more such engines are working within a distance of three hundred feet from each other, that only one such box equipped as above may be maintained.

Using or operating by any person, corporation, or company between May first and October thirty-first of each year any steam-operated donkey, stationary engine, locomotive, or loader without providing such engines with an adequate force pump or water under pressure equivalent to a pump, and not less than two hundred feet of hose, of not less than one inch in diamenter: *Priveded, however,* That where two stationary or donkey engines customarily operated within one hundred feet of each other, that one engine only need be equipped with pump and hose.

It is provided that the requirements of this section shall not apply to logging operations in the redwoods (*Sequoia sempervirens*) region.

(11) Refusing or failing to render assistance in combating a forest, brush or grass fire at the summons of the State forester, deputy forester, assistant State forester, or any county fire warden, fireman, or county officer charged with the duty of preventing or combating forest, brush, or grass fires, or any officer of a county fire protection district, unless prevented from so doing by sickness or other physical disability.

(12) Leaving a campfire, kindled or attended by him, burning or unextinguished unless he leaves some person in attendance thereat, or unless such fire is enclosed within a stove, oven, drum, or other noninflammable container, in such manner that the fire cannot escape from the container, or unless such fire is within a permanent dwelling regularly and permanently inhabited by human beings at the time thereof, or allowing any such fire to spread after being built.

(13) The provisions of this act shall not apply to the customary use of fire and powder in logging operations in the redwood region (*Sequoia sempervirens*), nor to the setting of fire on lands within any municipal corporation of the State.

(14) Nothing in this act shall be construed to authorize any county fire warden, fireman, or county officer to obligate the State of California for the payment of any moneys.

Sec. 600. Felony

Burning structures, etc., not the subject of arson.—Section 600 of the California Penal Code is as follows:

Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any structure, snowshed, vessel, or boat, not the subject of arson, or any tent, or any stack of hay or grain or straw of any kind, or any pile of baled hay or straw, or any pile of potatoes, or beans or vegetables, or produce, or fruit of any kind, whether sacked, boxed, or crated, or not, or any growing or standing grain, grass, or tree, or any fence, or any railroad car, lumber, cordwood, railroad ties, telegraph or telephone poles, or shakes, or any tule land or peat ground of the value of twenty-five dollars or over, not the property of such person, is punishable by imprisonment in the State prison for not less than one year nor more than ten years.

This seems to be the only felony section of the California law applicable to forest fires. Its provisions are seldom invoked, but reference to them is often useful in dealing with a recalcitrant suspect.

Sec. 447. Arson

Section 447 of the California Penal Code defines the crime of arson as the wilful and malicious burning in the night time of an inhabited building in which there is at the time a human being. All other kinds of arson are of the second degree. Both degrees of arson are, however, felonies and are tryable in superior courts.

An inhabited building is any building which is usually occupied by some person at night. To constitute a burning within the meaning of the law it is not necessary that the building be destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

This law applies to the destruction of any ranger station, lookout house, or other inhabited building belonging to the Government. The thorough investigation of such cases should not be left to local authorities as much valuable time may be lost in getting in touch with such officers.

Sec. 6*a*. Release After Arrest

(Statutes 1931, ch. 78, p. 1642)

Section 6a of the California Forest Fire Protection Act provides for the release without bail by the arresting officer of persons arrested for minor violation of the State fire laws, providing the person to be released gives satisfactory identification and agrees in writing to appear as directed.

Any person who willfully violates his written promise to appear is guilty of a misdemeanor regardless of the disposition of the charge on which he was originally arrested.

The following form should be used:

Form 13–R.5 United States Department of Agriculture
FOREST SERVICE

NOTICE TO APPEAR

_____ National Forest _____, 193__.

Name_____ Address _____

Auto license No. _____ Make _____

You are hereby notified to appear before justice of the peace _____

of _____ township, at _____

Calif., at_____ oclock __ m., on the _____ day of _____, 193__.

Charge_____

I Hereby Agree to appear at the time and place mentioned.

_____ _____

(Signature of Defendant) State Fire Warden and U. S. Forest Officer

State Law Interpretations

If any question arises as to the interpretation of any section of the State law or as to its specific application, which makes it desirable to obtain the opinion of the attorney general of the State thereon, the matter

should be submitted through the regional forester and regional law officer and not direct from the field officer to the attorney general of the State.

The question has arisen as to when a justice court can legally hear a case. The gist of an opinion rendered by the attorney general under date of October 15, 1937, is that a justice court should not hold a session on Saturday afternoon or Sunday or on any other holiday, and should confine its business to regular judicial days and, if necessary, to night sessions, except for the filing of complaints and the setting of bail.

STATE FIRE LAWS (NEVADA)

The revised laws of 1912, 1927, and 1929 are summarized as follows:

Operating engine or boiler not equipped with modern spark arrester in good condition in dangerous proximity to brush or other inflammable material. Misdemeanor—Revised Laws, 1912, section 6580.

Willfully and negligently leaving fire or fires burning or unextinguished upon departing from a camp or from any fire started in the open. Misdemeanor—Revised Laws, 1912, section 6632.

Willfully or negligently setting or failing to extinguish any fire on his own land or that of another endangering timber or property of others. Misdemeanor—Revised Laws, 1912, section 6579.

Throwing or placing any lighted cigarette, cigar, or ashes in any place where they may cause a fire. Throwing from a moving vehicle any lighted cigarette, cigar, or ashes which may cause a fire. Misdemeanor—Laws of 1929, chapter 134.

Able bodied male persons between 16 and 50 subject to fire duty. Refusal to obey summons or assist in fighting fire for a total of not more than 5 days during any one year (fire fighters to receive benefits of Industrial Insurance Act). Misdemeanor—Laws of 1927, chapter 45, section 1.

Lighting fires along roads through or in any woodland or any other place in the open or by any other means setting fire to growing timber, forest, etc. Destruction of any timber, forest, etc., or property not his own of the value of $50 or more. Felony—Revised Laws, 1912, section 6633.

CIVIL LAWS (CALIFORNIA)

Civil Liability for Failure to Control Fire

(Statutes 1931, ch. 790, p, 1644)

Section 1. Any person who:

(1) Personally or through another, and

(2) Willfully, negligently, or in violation of law, commits any of the following acts: (1) Sets fire to; (2) allows fire to be set to; or (3) allows a fire kindled or attended by him to escape to the property, whether privately or publicly

owned, of another, is liable to the owner of such property for the damages thereto caused by such fire.

SEC. 2. Any person who allows any fire burning upon his property to escape to the property, whether privately or publicly owned, of another, without exercising due diligence to control such fire, is liable to the owner of such property for the damages thereto caused by such fire.

SEC. 3. The expenses of fighting such fires shall be a charge against any person made liable by this act for damages caused thereby. Such charge shall constitute a debt of the person charged and shall be collectible by the party, or by the Federal, State, county, or private agency incurring such expenses in the same manner as in the case of an obligation under a contract, expressed or implied.

SEC. 4. This act shall not apply to or affect any existing rights, duties, or causes of action, nor shall it apply to or affect any rights, duties, or causes of action accruing prior to the date this act takes affect.

SEC. 5. Section 3344 of the Political Code is hereby repealed.

SEC. 6. Section 3346a of the Civil Code is hereby repealed.

In order to hold for costs or damages, in a civil action, an owner of land on which a fire is burning, in event of the escape or spread of the fire to national forest land, the following things must be observed at the time of the fire:

1. The owner must be notified of the existence of fire on his land, together with its size and degree of danger, and the nature and probable cost of the measures required to combat it.

2. This notification must be in time to give him reasonable opportunity to take the required action before it spreads to national forest land.

3. It must be borne in mind that an owner of land must have knowledge of the existence of a burning fire thereon in order that he may have an opportunity to extinguish it or make a reasonable effort to extinguish it.

4. No action should be taken by the Forest Service to fight such a fire unless it endangers national forest land, before the owner has commenced action on it or has had a reasonable time in which to do so.

It should be noted that the above has no reference to criminal prosecutions.

Chapter VI.—DECIDING ON THE PROPER COURSE OF ACTION

In respect to trespasses there are, in general, the following possible actions:

A. Legal:
1. Criminal.
   (*a*) State.
   (*b*) Federal.
2. Civil (costs, damages, injunctions, etc); always Federal so far as concerns national forests.

B. Administrative: Revoking of permits or refusal of new ones, cancelation of priorities or reduction of numbers (in grazing permits), etc.

In cases of willful fires, criminal action is mandatory whenever evidence can be secured sufficient to sutain it, and is usually so in the case of negligent fires originating on the national forests. The effort to secure such evidence is equally mandatory. Criminal action may also be desirable in many other cases.

Whenever substantial damage has resulted to the national forest, however, the desirability of instituting civil suit must be considered, together with the possibility of administrative action if the trespasser is a forest user. In some cases civil or administrative action may be in addition to criminal action, in others an alternative to the latter. Damage suits are only of value when the trespasser has sufficient assets to satisfy a judgment, if obtained. Decision in respect to civil or administrative action lies with the supervisor or regional forester.

The trespass investigator must bear these facts in mind and make report on Form 874–20 to the supervisor immediately, or as soon as necessary data can be obtained, in all cases where civil or administrative action may be a possibility, in accordance with the Trespass Manual.

In all cases involving criminal responsibility, however, he must protect his own work by proceeding with his investigation, pending further instructions, as energetically as if no other action were possible.

CRIMINAL ACTION

Actions brought under Federal statutes or regulations of the Department of Agriculture must be brought in Federal courts, and those under State statutes in State courts.

For example, the offenses of allowing fires to escape from the control of the person having charge, or of allowing fires to spread to the lands of another person without using every reasonable and proper precaution to prevent such escape, should be taken up under the State law, since the Federal law and regulations do not include them.

This restriction would not be true, however, if the fire was willfully set with the purpose of communicating it to other land. When it can be proved that fires set on a national forest were prearranged by two or more persons, prosecution is also possible in the Federal courts on the felony charge of conspiracy, under section 37 of 35 Stat. 1096, cited above. Conspiracy, however, is an exceedingly difficult thing to prove, and the working up of such a case usually requires considerable detective ability.

When an offense is covered by both State law and Federal law or regulation, choice of court may depend either upon which law covers the case best, in view of local circumstances, or the nature of the evidence available, or upon the speed which may be expected in the respective courts, together with the attitude of the officials who would have to be concerned or of public sentiment in the local communities where minor courts would sit and from which juries would be drawn. Especially when a suspect can be brought to plead guilty, the justice's court is usually the quickest and best resort.

Justices' courts have jurisdiction only over crimes punishable by a fine of not over $500 or imprisonment of not over 6 months. This, however, covers the maximum penalties provided by section 384 of the State Penal Code.

A crime commenced in one county and finished in another can be prosecuted in either county.

Theoretically, acquittal in a justice's court constitutes no legal bar to a prosecution in a Federal court for the same offense, provided the case is one of which the Federal court can take appropriate cognizance, but

in practice Federal authorities are reluctant to prosecute such cases. A serious miscarriage of justice, leading to an acquittal in the lower court, must be shown before the assistant to the solicitor will recommend further prosecution.

Rewards are offered by Department of Agriculture regulation (see N. F. Manual, regs. T–2 and T–4) in fire and property trespass cases.

As a summary, then, with the exception of cases coming under section 600, the State law is limited to misdemeanors, but is usually speedier in action than the Federal. It is necessarily used in cases covered only by it, and is preferable for the less important cases covered by both State and Federal laws, when a plea of guilty can be secured, and in jury actions if official cooperation and favorable community sentiment are reasonably assured. The Federal law is preferable in flagrant cases and where it is desirable to get a case away from adverse local prejudice in order to obtain trial on its merits; and it is necessary for violations of Federal laws or regulations not covered by the State law, for conspiracy cases, and when it is desired to offer reward. A Federal prosecution is much more effective as a future deterrent in aggravated cases, because of greater penalties in case of conviction.

Great care should be taken, however, that the defendant does not get the impression that the Forest Service will allow him to plead guilty to a minor offense in a lower court rather than to take chances with their evidence before a Federal jury.

Action in Federal cases must be under the direction of the assistant to the solicitor, and should have his counsel on all legal difficulties in State cases. All but the clearest justice's court cases will require report on Form 874–20, as provided in the manual, by the ranger or other investigator for decision as to action.

STATUTE OF LIMITATIONS

Initial court action under the Federal laws and regulations is limited to 3 years in both misdemeanor and felony cases. Under the State laws it is limited to 1 year in misdemeanor and 3 years in felony actions. The filing of a complaint, information, or indictment will stop the running of the statutes.

CIVIL ACTIONS

Civil action brought by the United States must be in a Federal court, under the direction of the district assistant to the solicitor. When civil action may possibly be in addition to criminal action, the report on Form 874–20 must be especially explicit with respect to the evidence available for criminal action, since criminal action instituted in advance of a civil action for the same offense and resulting in failure is almost certain to kill the chance of success of the civil suit.

In addition to data on damage to the United States, the Form 874–20 report should also give information on the probable possession by the trespasser of assets sufficient to meet a civil judgment, as well as the probable effect of the damage suit in question upon the sentiment of the community. These are points often requiring consideration in connection with such suits.

CIVIL ADMINISTRATIVE ACTION

Under the provisions of regulation T–10 (supervisors' cases), National Forest Manual, the forest supervisor may accept settlement for any innocent or unintentional trespass in which the claim against the trespasser does not exceed $300 only, *when authorized in advance by the regional forester.* What constitutes innocent or unintentional trespass depends upon the facts in the particular case. The supervisor must use due care to show that the trespass was committed without *intent* to damage the property of the United States. If, for instance, in a timber trespass, the party has not previously committed timber trespass on a national forest, the cutting was due to the boundary lines not being clearly marked, and the facts show that the trespasser is free from malicious and gross carelessness, this would be considered an unintentional or innocent trespass, and could be settled by the supervisor, if for an amount less than $300. If, however, the trespasser had been warned not to trespass and shown the boundary lines, and had cut in spite of the warnings, this would come under the nature of willful trespass and could not be settled by the supervisor.

Every forest officer must recognize the fact that there is no authority to compromise any trespass claim by receiving in settlement a sum less than the amount due.

Whenever a person responsible for a fire is a forest user, and especially if his guilt is convincingly established in the mind of the investigator, but the nature of the case or of the evidence available is such as to make successful criminal prosecution doubtful, the report on Form 874–20 should present specific recommendations, fully explained, with respect to appropriate administrative action. A similar report should also be made with respect to users who, though not directly responsible for fires, fail to make proper effort to extinguish them in accordance with the terms of their permits, who refuse to fight fire or to give information, or otherwise fail to aid when requested in the prosecution of those responsible for trespasses.

Final action in such cases will be determined by the regional forester after considering the facts, or holding hearings, if this seems necessary.

Chapter VII.—OTHER TRESPASS

FISH AND GAME

The fish and game laws are too voluminous for reproduction here. Every forest officer must have, as a part of his law-enforcement equipment, a copy of the latest edition of the fish and game laws of the State in which his district lies. The fish and game laws of California, as published in pocket pamphlet form by the State Fish and Game Commission, contain also the Federal laws and regulations relating to migratory birds. Copies can be obtained on request to the regional forester.

REGULATIONS

In addition to the preceding, Department of Agriculture Regulation T–7 provides as follows:

Reg.T-7 (As revised 4-18-38)

The following acts are prohibited on lands of the United States within National Forests:

Hunting, trapping, catching, disturbing, killing, or having in possession any kind of game animal, game or non-game bird or fish, or taking the eggs of any such bird, in violation of the laws of the State in which such land is situated.

[illegible] the eggs of any such bird, except when authorized by permit issued by, or under the authority of, the Forester.

(*b*) Carrying or having possession of firearms, without the written permission of the forest supervisor or such other officer as he may designate.

(*c*) Permitting dogs to run at large, or having in possession dogs not in leash or confined.

(*d*) Camping without permit issued by a forest officer, except on areas designated as public campgrounds, or other areas which may be specifically excepted by the regional forester.

COURSE TO PURSUE

Legal action.—In fish and game violation, legal action will be criminal only. Whenever, this action can be taken in cooperation with the State fish and game commission or their wardens effectively, and without liability of loss of cases, it should be done. Their cooperation will often divide the time and cost of the necessary work. In some cases, however, these men may not be located so that they can promptly undertake specific investigations or prosecutions.

Game refuges also present aspects which may require independent action, since it has been ruled by the courts that these refuges must be properly posted and patrolled before action against offenders upon them is possible in the State courts. Action in such cases may be taken, under regulation T–7, in the Federal court, provided the offender can be caught on Government land, and that fact proved to the court.

For additional information, refer to explanatory section in the National Forest Manual.

GRAZING

REGULATIONS

Grazing trespass is almost wholly governed by Forest Service Regulation T–6 and terms of permit. According to the National Forest Trespass Manual, the following acts constitute trespass:

Allowing stock not exempt from permit to drift and graze on a national forest without permit.

Grazing or driving stock not exempt from permit on national forest land without permit.

Violation of any of the terms of a grazing or crossing permit.

Refusal to remove stock upon instructions from an authorized forest officer when an injury is being done to the national forest by reason of improper handling of the stock.

COURSE OF ACTION

Legal action in grazing cases, whether criminal or civil, falls in the Federal court. Questions of civil or administrative action are especially important in grazing trespass, and the supervisor must be kept in correspondingly close touch with all developments, especially by Form 874–20 report.

The first distinction lies between permitted and nonpermitted stock.

In the case of nonpermitted stock, legal action is the only recourse. If material damage has resulted to the national forest, a civil suit should be brought against the owner. Criminal action can also be instituted if the gravity of the case warrants. If the damage is slight, civil action only should be resorted to. When for any reason neither civil nor criminal action against an owner of trespassing nonpermitted stock seems feasible, and settlement of damages cannot be obtained, such settlement should be required as a condition of favorable action if the trespasser applies for a permit in the future. When any grazing trespass involves negligence or knowing participation on the part of the herder or other person in charge of the stock, criminal action should be brought against him, either with or without action against the owner.

In the case of permitted stock, both legal and administrative action are possible. Double penalty should never be invoked, however, and revocation of permit is usually a greater penalty than any possible damages or fine. The gravity of the offense and the effect of possible actions upon the permittee should always be considered. Only in aggravated cases should the permit be revoked; in less serious cases where disciplinary measures appear preferable to legal action, reduction or some less severe administrative action than revocation should be chosen. Damage suits should be brought only when the damage is commensurate with the cost of the action, and when the trespasser has sufficient assets so that damages can be recovered. In case of suit to recover damage to forage as the result of fire trespass, the damage figures must be based on the rental value of the land. Methods of computing this damage are the subject of special instructions. Criminal prosecution should be used more than in the past, especially with respect to herders, provided there is no opening for a just charge of prosecuting subordinates only, when their principals are responsible for the trespass.

Under certain conditions suits can now be brought by the Forest Service for trespass on private land waived under regulation G–4.

With respect to trespass on mineral return (R. R.) land, the possibility of damage suit is doubtful.

For cases which cannot be effectively handled under the former trespass procedure, the following regulation was approved February 1, 1925:

IMPOUNDING OF LIVESTOCK—REGULATION T–11

Domestic livestock found trespassing on national forest land, if not removed upon reasonable notice, may be impounded by the Forest Service. If the owner of the stock is known, prompt written notice of the impounding will be given him, and unless the stock be removed by the owner within 5 days from the receipt of such notice, the stock shall be sold or otherwise disposed of as hereinafter prescribed. If the owner be not known, notice shall be given by publication for not less than 15 days in a newspaper of general circulation in the county in which the trespass occurs and concurrently by posting at the county courthouse. In either case the notice shall state when and where the stock was impounded, describe the stock by brands or other means of identification, and specify the time and place it will be sold in default of redemption by the owner. If the stock be not redeemed on or before the date fixed for its sale, it shall be sold at public sale to the highest bidder, or otherwise disposed of. The owner may redeem the stock by submitting proof of ownership and paying all expenses incurred by the United States in advertising, gathering, pasturing, and impounding it. Upon the sale of any stock in accordance with this regulation, the forest officer shall issue a certificate of sale. Any stock impounded under this regulation which is offered at public sale and no bid received therefor, may, in the discretion of the forest officer, be sold at private sale or be condemned and destroyed.

TIMBER

REGULATIONS

Timber trespass is usually handled under the provisions of regulation T–5.

Reg. T–5.—The following acts are prohibited on lands of the United States within national forests:

(*a*) The cutting, killing, destroying, girdling, chipping, chopping, boxing, injuring, or otherwise damaging, or the removal of any timber or other forest product, except as authorized by law or regulation of the Secretary of Agriculture.

(*b*) The damaging or cutting, under any contract or sale or permit, of any living tree before it is marked or otherwise designated for cutting by a forest officer.

(*c*) The removal from the place designated for scaling, measuring, or counting of any timber or other forest product cut under contract of sale or permit until scaled, measured, or counted, and stamped by a forest officer.

(*d*) The stamping, except by a forest officer, of any timber belonging to the United States, either with the regulation marking tools or with any instrument having a similar design: *Provided,* That timber lawfully cut from public land which is subsequently included within a national forest may be removed within a reasonable time after the inclusion of such land in a forest.

DAMAGE APPRAISAL

In addition to what is shown in the National Forest Manual under Timber Trespass, the following will be observed in determining values:

In civil cases where suit is anticipated and damages are to be calculated, the fire damage appraisal values shown on Form 930, Sheet L–M, or Form 929, individual fire report, should not be used.

Damage to mature timber must be based on stumpage values ascertained from actual sales in the locality in recent years.

The damage to young growth must be based on replacement or reforestation value, and not on expectation value.

The method of computing these damages are the subject of special instructions. (See Washington circular S–Trespass–Fire, May 8, 1916.)

OCCUPANCY

REGULATIONS

In occupancy trespass, as covered by regulation T–8, the provision under which law enforcement investigation will most often figure is probably clause (*b*) requiring occupancy, structures, etc., on claims to be "for the actual use, improvement, and development of the claim, consistent with the purposes for which it was initiated." This provision should cause a careful scrutiny of wildcat mining claims and others, which are still in some localities being used as a cover for the enjoyment of uses or benefits not consistent with the purposes for which the claims were initiated.

COURSE OF ACTION

Action in occupancy trespass will be mainly legal, and this almost entirely civil. This will require uni-

form reference to cases to the supervisor and regional forester for decision on action to be taken. Civil action may be for injunction, ejectment, cancelation of easements, or other rights not legitimately used, or for quieting of title, etc. Legal action will lie in Federal courts only.

Administrative action would figure only collaterally, as in fire cases, but should not be overlooked when the trespasser holds any forest permit.

PROPERTY

LAWS AND REGULATIONS

Property trespass, as provided for by regulation T–3, covers only defacement, damage, or destruction, etc., to Government property, including notices and signs, or going or being upon national forest land with intent to commit the same. Property offenses which may require law-enforcement investigation and prosecution may include robbery or theft under the Criminal Code, act of March 4, 1909, sections 46 or 47 (35 Stat. 1097), which provide as follows:

SEC. 46. Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 47. Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records of property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Section 48 of the same statute also provides similar penalties to those of section 47 for knowingly receiving, concealing, etc., Government property stolen as in section 47.

SEC. 60. Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line or system, operated or controlled by the United States, whether constructed or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both (act of March 4, 1909, 35 Stat. 1099).

The following acts are prohibited on lands of the United States within a national forest by regulation T–3:

(*a*) The willful tearing down or defacing of any notice of the Forest Service.

(*b*) The going or being upon such lands with intent to destroy, molest, disturb, or injure property used, or acquired for use, by the United States in the administration of the national forests.

(*c*) Destroying, molesting, or disturbing, or injuring property used, or acquired for use, by the United States in the administration of the national forests.

(*d*) Mutilating, defacing, or destroying objects of natural beauty or of scenic value on such lands.

(*e*) Damaging and leaving in a damaged condition roads or trails which are under the jurisdiction of the Forest Service.

(*f*) Entering, occupying, or using, without permission from a forest officer, any building of the United States used by the Forest Service in connection with the administration of a national forest, except in case of emergency to prevent suffering.

(*g*) Leaving any building of the United States used by the Forest Service in connection with the administration of a national forest without placing the same in a condition as sanitary as when entered.

(*h*) Driving prohibited vehicles upon any road or trail which is not a part of a State or county highway system and is located upon national forest lands during any period when such road or trail has been closed to vehicular traffic by authority of the regional forester through the posting of proper notices of that fact along said road or trail, but nothing herein contained shall deprive actual residents within the national forests from reasonable opportunity to travel to and from their homes.

Reg. T–4.—Hereafter, unless otherwise ordered, provided Congress shall make the necessary appropriation, or authorize the payment thereof, the Department of Agriculture will pay not exceeding $100 and not less than $25 for information leading to the arrest and conviction of any person charged with destroying or stealing any property of the United States within the custody of the Forester (Chief) Forest Service, United States Department of Agriculture.

This reward will be paid to the person or persons giving the information leading to such arrest and conviction upon presentation to the Department of Agriculture of satisfactory evidence thereof, subject to the necessary appropriation as aforesaid, or otherwise as may be provided.

Officers and employees in the Department of Agriculture are barred from receiving such rewards.

The Department of Agriculture reserves the right to refuse payment of any claim for reward when, in its opinion, there has been collusion or improper methods used to secure arrest and conviction, and to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances have entitled the person to a reward on each conviction.

Applications for reward, made in pursuance of the above notice, should be forwarded to the Forester (Chief) Forest Service, Washington, D. C., but no claim will be considered unless presented within 3 months from the date of conviction of an offender.

In order that all claimants for rewards may have opportunity to present their claims within the prescribed limit, the Department will not take action with respect to rewards for 3 months from the date of the conviction of an offender.

DESTROYING OR TEARING DOWN NOTICES

Section 616 of the California Penal Code is as follows:

> Every person who intentionally defaces, obliterates, tears down, or destroys any copy of transcript or extract from or of any law of the United States or of this State, or any proclamation, advertisement, or notification set up at any place in this State by authority of any law of the United State or of this State or by order of any court before the expiration of the time for which the same was to remain set up, is punishable by fine of not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

OFFENSES COMMITTED NEAR BOUNDARY OF TWO COUNTIES

Section 782 of the California Penal Code states:

> When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

Legal actions in property offenses will be in Federal court, if a Federal law or regulation is involved, and will in most cases be criminal. Civil action for the recovery either of damages or the property itself (replevin) is not precluded, and may be either in addition to criminal prosecution or as an alternative to the latter. But the expediency of damage suits is questionable here more often than in most other trespasses on account of financial responsibility of the trespasser.

Chapter VIII.—GENERAL INVESTIGATIONAL METHODS

QUALIFICATIONS

The greater a man's ability the more he can accomplish in this as in any other work. Qualifications peculiarly necessary for an investigator are observation, common sense, industry. Nothing is so small as to be safely overlooked; a whole case may turn on what seems a most unimportant detail. On the other hand, many details are unimportant. The correct judging of importance hinges largely upon the imaginative power to picture constantly in the mind the whole case and its probable development. Beware of letting anything go as unimportant without thus carefully weighing it.

Catching a criminal is a battle of wits; the one who thinks hardest all the time wins. No stone can be left unturned, no reasonable theory left untried. Success in difficult cases requires special aptitude as well as experience. Only by hard work and hard thinking, concentration of every energy on the one issue at hand, and wholehearted devotion can anyone carry this work to success in spite of discouragement, apparently unsolvable problems, and unfavorable jury decisions when it seemed that the case would not go wrong.

PRELIMINARY INFORMATION

Success demands thorough preparation. This includes not only a knowledge of the laws and procedure governing the work but of the details of all lawless regions, such as topography, trails, and other get-away avenues; of the persons, existing in every community, who know all about the rest of the community, and the cultivation of their goodwill so that one may turn to them for information when necessary; of the habits, rendezvous, and associates of general community suspects and of their family, business, and other relationships, so that in seeking information from others you may not unwittingly kill your own case by approaching one of their close sympathizers; and even of the in-

terior arrangements of their houses and residence premises, against the possible necessity of serving search warrants.

STARTING OUT

Investigative work, especially in fire cases, demands even greater speed in get-away than does suppression. If footprints lie for days, or even until after the suppression crew has tramped over the ground, before they are investigated, not only may they be obliterated by others but the defense will not be slow to take advantage, in a trial, of the possibility that tracks proved to be those of the defendant could have been made after the offense was committed. The latter danger applies to other trespasses as well as fire. The only safety lies in starting investigation on the ground with all possible speed.

HOW MANY MEN

For investigative purposes two will be best, providing for witness and assistance, while reducing the chance of confusion and obliteration of clues. The matter of assistance is especially important in case of arrest in order to give the investigator someone with whom to leave the arrested person if it should be necessary for the investigator to go elsewhere or to attend to other business.

EQUIPMENT

To get away quickly, the investigator must have his equipment packed and ready beforehand. A notebook is one of the most essential items. Everything must be written down; no detail is too small. This becomes particularly important when the case must be taken up later by a special investigator who has not participated in the initial hunt for clues. Each searcher for clues should also have a map. A United States Geological Survey quadrangle, or a forest recreation map, if accurate, is the most convenient base map on which to keep the general layout.

WHAT TO DO

The first man or men at a fire must either take up the hunt for clues or make sure that these will not be destroyed until the investigator can get there.

They should see that fire fighters are kept from crowding around the fire until the ground has been looked over for evidence, and they must make all fire fighters stop horses and keep off the trails themselves, for at least 100 yards from the origin of the fire. Require men in charge of fire fighting to keep eyes open for clues and to note people met on trails, with time of meeting, especially outsiders first on the scene of a fire; to keep ears open for boastful or antagonistic remarks of fire fighters, who may themselves have set the fire or know who did; and to report anything learned to the district ranger or other investigator at once.

SEARCHING FOR CLUES

What are clues?—No deed is done without leaving clues; the only question is the investigator's ability to find them. A no-clue case means only that he was not up to scratch in finding them.

Anything is a clue which has any connection with the offense or its author. Tracks, campfire, or lunch remains, "plant" used to set off a fire, blanket or other threads pulled off by brush or trees, hairs, scraps of paper, or other things carelessly or unintentionally left by the offender, etc., are examples. A good working rule is that everything is to be held as a clue which cannot be accounted for without reference to the offense. While all things unaccounted for are clues, they do not become evidence until their connection with the action of the suspect is clearly shown.

Some things, such as tracks, the forest officer can interpret better than any outside expert; in other words, he is himself the best expert. Other things can only be interpreted by those with special training; for example, the microscopist, the chemist, or other specialist. Not even the smallest thing is unimportant until it is certain that it has no useful connection with the case.

THE WORKING THEORY

To guide the investigator in the interpretation of clues or evidence two things are necessary: (1) Every bit of knowledge he can gather before leaving for the scene or on the way, as to the offense, including its occurrence, surrounding circumstances, and probable

author and motive; (2) the building of a mental picture or reconstruction of all that he knows of the case. This must be constantly building and constantly revised. Nothing else will prevent wandering, loss of time, and possible failure. At the start it may consist only of a hunch as to who set the fire or where to look for clues; but every new thing found will contribute to it. This mental reconstruction or theory of the case is the indispensable bridge by which to cross from the initial clue to the completion of the case.

HOW TO SEARCH

On arriving at the scene, first locate the critical point; for example, the origin of a fire. If the point of origin is not evident, beware of jumping to conclusions; the incendiary or other criminal does not do the obvious thing if he has sense. Then examine minutely the immediate area. System is absolutely necessary in this search. Go carefully around the point of investigation, widening the circles each time, but keeping them close enough together (say 3 feet apart at first) to make sure that every foot of ground is minutely examined. Drop markers to show where each circle ends.

NOTEBOOK RECORD

Record must be kept of everything found and done, and of all conversations held or information obtained. Court proof can depend on nothing less than definite written record. Describe everything found, and record items in the definite order in which they occur. The time of every occurrence or find, and of every notebook entry, should be recorded. Also, be sure to get from suppression foreman, or other sources, the exact time fire was started, discovered, fighting commenced, etc., time persons were met on trails, and all other significant circumstances. The time record is essential, and it will be sure to fall down unless all concerned cultivate a look-at-the-watch habit.

The notebook record must contain everything. It must also be in orderly form for immediate use. For both these reasons it is essential that the recording of notes keeps pace with the discovery of clues. This takes time; but end-of-day writing-up will not work and cannot be tolerated on this job.

MAP RECORD

An accurate map is the best means of showing many of the facts of trespass for the trespass report or in court, and is necessary in every case. The field draft of this map can be prepared on the ordinary map forms.

Look over the map when made, to be sure it is complete. Especially in maps of a man's trail, as well as flow of streams, be sure to indicate direction of movement by arrows.

HANDLING EVIDENCE MATERIAL

Do not touch any objects found which will figure as clues or evidence until they have been accurately described and, if possible, photographed in place. Then pick them up and see if there is anything further to be described which was not evident in place; but pick up nothing which might have been handled by the offender, except by the edges or corners. This is imperative because of possible fingerprint evidence, which the investigator's fingerprint might obliterate. A good suggestion is to handle such material only with gloves kept carefully cleaned by gasoline.

MARKING EVIDENCE FOR IDENTIFICATION

When anything is found, ask yourself at once: What will be necessary to establish the identity and authenticity of this if needed as evidence in court? Collateral, support, or corroboration of evidence may be necessary; a witness to its finding is also invaluable. By getting everything required at the same time, you will be saved the annoyance of a second trip. In any case, the finder must put on every object found a private mark, in a hidden or inconspicuous place, by which he can himself identify it in court as the identical object found. This, together with the notebook record of the circumstances of finding, in chronological order, is the best safeguard against an intimation by a shrewd defense attorney, to the possibly serious prejudice of a jury, that evidence has been "planted" by the prosecution.

Always remember that in the prosectution of a criminal case, the facts as alleged in the complaint must be proved beyond the shadow of a reasonable doubt, and the inability of a witness to properly

identify an article of evidence may create that degree of doubt in the minds of a jury.

All objects which it may be desired to use as evidence should be guarded with the utmost care, to avoid possibility of loss, or their purloining by the defendant or his sympathizers. The district ranger, or special investigator, should take personal charge of all such articles, unless it be convenient to turn them over to the custody of a United States marshal or a sheriff. In the latter case, the forest officer turning over such articles must, of course, take a receipt, and so note them in his notebook record that they will not be overlooked in working up his material for the case. This care in having such objects under continuous and responsible custody is also a safeguard against suspicion of "planting."

THE PLAN OF CAMPAIGN

The case to be built up must be: (1) True; (2) complete; (3) proved by evidence which will stand in court and convince a jury.

(1) *The true case* starts with a few facts and a tentative theory based upon them and upon best surmises. Whenever new clues or facts are found, ask yourself: (*a*) What instructions, if any, are there in respect to a situation like this? (*b*) What does this act mean? (*c*) On the basis of facts to date, if I were the criminal, what would I do next? Sit down and smoke a pipe over it, if that will help. There is no time to be wasted, but right interpretation of facts and right action with regard to them are so essential that the time necessary to insure these will yield bigger dividends than undue haste. Moreover, most of us find general instructions so difficult to apply to concrete cases that it requires specific and conscious effort; but to do it is a constant necessity until one becomes very familiar with the instructions. Most of the past failures in law enforcement have been on points directly covered by unheeded instructions. No instructions are beyond improvement; but every investigator for the Forest Service will be held responsible for following those given him, unless other action is proved better by actual results.

With respect to the working theory, the simplest one which will explain the facts is always preferable; but the theory is never complete until the case is closed.

At all times, but especially at first, when the theory is based on few facts, it must be lightly held, subject to modification at any time by what shall be discovered next, regardless of whether the new evidence agrees with the previous theory or not.

Such open-mindedness, viewing every new fact on its own merits, is harder to maintain than many people suppose, and requires constant and definite effort. It is extraordinarily easy to overvalue new facts which coincide with the theory already built, and to undervalue those which do not. Nothing is more fatal to success or more common among inexperienced investigators than a preconceived theory which its holder will not change when evidence contrary to it appears. Therefore, it is necessary every little while to review one's theory systematically in the light of all facts. Especially beware of believing that any given man could not have set the fire—believe your evidence; in investigation reverse the legal rule and believe anybody guilty until he is proved innocent. Beware of thinking the criminal could not have made so big a blunder, when one is indicated—he usually does blunder somewhere, otherwise he would never be caught.

In building a sound theory, there are four steps:

(*a*) Clearly define the problem. This may not be what it first appears; be sure you know what the difficulty is.

(*b*) Cast about for possible solutions—not only the first one which occurs to you but as many as you can figure out; then compare their merits and select the most probable one.

(*c*) Reason out the developments of this idea to its logical conclusion.

(*d*) Constantly test your theory by searching for further evidence or by experiment. Keep your eyes open for evidence indicating some other theory as more probable and give honest weight to it.

(2) *The complete case.*—To be complete, the case must answer the following questions: (*a*) What was the offense? (*b*) Where was it committed? (*c*) When was it committed? (*d*) How was it accomplished? (*e*) Who did it? (*f*) Why did he do it?

Memorize these six words: *what, where, when, how, who, why,* and frequently test by them the completeness of both your theory and the facts so far actually

established. This will be one of the greatest helps in planning what remains to be done.

(3) *The case which will stand in court.*—Proof which will convince a jury "beyond a reasonable doubt," and which is necessary for a criminal trial, is much more difficult to establish than a case which will satisfy the investigator. Individual judgments take much knowledge for granted, but a court must, generally speaking, have actual proof of every material point. If you hear a shot, for example, and on going in the direction of the sound find a man standing over a dead doe, you will not be long in reaching a conclusion. But if you arrest him while he is only looking at the deer, you are liable to lose your case in court. You might possibly be able to find someone who saw him shoot and the doe fall. If he takes possession, however, you have him on that count, whether you can prove that he killed it or not. Whenever a fact is found which points to a material conclusion, ask yourself: (*a*) Does this sufficiently prove the conclusion? (*b*) What else, if anything, will be necessary to establish or corroborate it in court?

A jury will be convinced only by a *complete* chain of circumstantial evidence, both as to facts and the proof that they are facts. Constantly review this chain while following clues, to be sure no link is omitted. Also bear in mind that any one chain may be broken somewhere by the defense; therefore, build all the lines of evidence possible to your conclusion.

SPECIAL CLUES

TRACKS

Tracks are among the most important clues. If a fire is set or other offense committed by human agency, a man walks or rides to the scene of the act. He may cover up his tracks in the immediate vicinity of the offense, or they may be burned over or obliterated by others. Farther away from the fire he will settle down to normal gait. If no tracks are found at or near the origin, it will be necessary to widen out. This wider search should begin at the most likely point; but until the tracks are found, the search should be conducted on a rigid system, so that no area will be overlooked. If it is possible to get wind of the present whereabouts of suspect, the investigator should, of course, cut away

and get him, leaving assistants to connect up the complete trail for use as evidence, or postpone this until the suspect is disposed of. For the man who has gone in pursuit of the suspect, it saves time and is usually just as effective to take up the completing of the trail backward from the point where the suspect is taken to the point where it was previously left.

Identification of Tracks

Study of details is essential; dimensions and shape of imprint, nails (present and missing), seams, creases, cracks, or other distinctive marks; wear, repairs; age of track, manner of putting down the foot (twist as foot strikes the ground, etc.), angle of feet (toes out, straight ahead, or in), and differences between the feet in this angle, if any; barefoot, smooth, or roughshod horse tracks, specially shaped or weighted shoes, and gait of animal (as trot or space).

Age of Track

This is shown by sharpness of impression, by moisture and color, whether leaves and dirt lumps have fallen into it, or tracks of insects, birds, etc., or other man-caused tracks have crossed it, and by the condition of broken green twigs, etc. A trail made at night is often known by the way it bumps into or makes detours around obstacles. Whether a horse was ridden or led may sometimes be shown by the trail passing under or around low-hanging limbs.

Other Indications

Speed may be shown approximately by degree of slide at heel, depth of heel edge and toe edge, length of drag of toe, and distance between tracks. The class of person or animal can sometimes be deduced from tracks (high-heeled vaquero boots, now or pointed toe city-man's shoes, horseshoes versus mule shoes, etc.); also whether drunk or sober; carrying burden or free (feet wider apart, steps shorter and more unsteady with burden); and existence of bodily defects (step is shorter on lame leg, injured knee, or hip twists, foot drags, etc.). A confidential talk with the local shoemaker or blacksmith, if there is one, will often throw light on the ownership of shoes which make a peculiar track.

Following Tracks

Following tracks requires skill and experience. Points sometimes overlooked are the following: In dry pine needles breakage or minute differences in color are often discernible if the investigator is on his hands and knees, though the needles have sprung back to position and no trace is visible from a standing position. Tracks in dry grass also require extremely close attention. Barring wind, grass will usually hold what impression is made until the coming of night dew, fog, or rain. Through brush a trail can be followed by broken or skinned twigs near the ground when it is invisible on the ground itself. When the trail is broken or lost, circle ahead in the probable direction of the trail; stakes set by tracks found will help to line up the course.

Comparing Tracks

To convince a jury, it is necessary to identify tracks found with known tracks of the suspect. A track may be compared with a foot or shoe for identifying marks, but with regard to dimensions it is better to compare tracks, and also moving tracks with moving tracks, since tracks made in soft earth, especially at high speed, are always shorter than the foot making them because of the push toward center at heel and toe.

Getting check tracks for comparison is often ticklish business. An innocent man should not object to letting his track be measured, but he may take offense at the suspicion. Tact should be exercised not to antagonize innocent persons, although no one can be assumed to be innocent. If the evidence points to guilt, the tracks must be obtained. This is sometimes possible by indirection. In the case of human tracks, get the suspect to come outside on some pretext and lead him across gronud where he will leave a good track, which can be measured afterwards. Horses' tracks may be measured in the same way. If the owner objects, use a search warrant.

Automobile Tracks

How to tell the travel direction of autos puzzles many investigators. On earth roads the following are indicators: Pattern imprint of nonskid tires, which is steeper and more distinct on the rear side of each indentation; stones which are shoved ahead by wheels,

the track of the stone usually being intact close behind where it stops, and dust being piled by the shove on the forward side; imprint of partly imbedded stones slightly displaced by the wheels, the displacement being backward in very small stones and forward (or both forward and then backward) in those large enough to receive lateral as well as downward pressure; a sprinkling of sand or dust, which is found on the rear side of stones or other obstructions passed over by the wheel, while the forward side is usually swept clean; direction of skid on side slopes or against angling rocks of water breaks; the jump (when speed is sufficient) off the forward side of such obstructions, or in dropping into chuckholes; impact (wider tire imprint) on the forward side of chuckholes or against obstructions; action in ruts, where, in dropping in, a wheel will run off the high side to a feather edge, while in climbing out it will stay in the rut until side pressure forces it to climb out abruptly; the direction in which waterdrops or mud, are carried out of a mudhole, or a stream ford; traction slips, which occur in going up steep grades; the turn on curves, which is usually more abrupt on leaving than on entering a curve; the deeper impression due to standing, at stops in soft soil, the impression being more pronounced at its rear side; the Y where a machine backs out from a roadside stop. Even if no one sign is conclusive, the sum of those gathered by following the track closely for some distance will in most cases lead to a sure conclusion.

Excessive speed will almost always be disclosed by wind-whirl disturbances of the track, the distance of side throw of sand, mud, or water, side lurch on rough road, and the length of wheel jump in passing over obstacles. The size of car is approximately indicated by the width of tire tread, although this is affected by the amount of load, as well as by the air pressure in the tires. When the load is heavy, there is a higher piling up of the dust ridge which is left in the center of the wheel track by the suction and thrust of traction on pneumatic tires.

Proficiency in Tracking

Whether of men, animals, or autos, proficiency in tracking can be gained only by actual practice, and

plenty of it. While trackers cannot be made from books, one tracker can often tell another new kinks, and all can learn more by study. Let every man keep his eyes open and send in for the benefit of all the new things which he learns or clues familiar to him but not mentioned here.

Moreover, many who know are not able to explain clearly how they know, and the discussion in these instructions will help them in such explanation. The importance of this must not be overlooked; in court this question will surely be raised, and the opposing attorney will discredit testimony that does not answer it. "You must not only know that you know but also know *how* you know."

Record of Tracks

The original track, or a cast or replica of it, is the most convincing evidence.

The original footprint can often be solidified sufficiently by means of water glass to be dug out and preserved. This is specially useful in sand or sandy soils. If the soil containing the print is firm enough not to be displaced by it, the water glass can be poured directly into the print. If not, dig a shallow trench, a couple of inches wide and deep, around the print and several inches distant from it, and flow the water glass into the trench, until it has been soaked up by the soil so that it shows on the surface of the print. Then let it stand for a day. The print cannot be pried out, but must be carefully freed by digging the soil away from around and under it. It must also be handled with much care thereafter, which reduces the value of the method when conditions, such as transportation, are not favorable.

In this and many other cases, a more desirable method is to make a cast of the track with plaster of paris, or neat portland cement. Plaster of paris sets more quickly. The builder's finish plaster is seldom good enough. Cement is often more available to a forest officer. From the cast a replica of the track can be made, or not, as desired.

When the soil composing the print is firm enough, the plaster or cement can be wet-mixed by stirring carefully into water (sifting it in preferably, to avoid lumps) to the consistency of thick cream, and flowed directly into the impression, either by pouring, or, if

greater care is desirable, from a spoon. Pure plaster of paris sets in about 5 minutes and, therefore, requires rapid work; its setting can be retarded, however, if desired, by adding a little vinegar. When about one-half inch depth has been flowed in, reinforce the cast by laying in it, crossed at right angles, several thin water-soaked strips of wood. In the absence of these, small green twigs, or even stout string, will help. After adding another one-half inch of plaster the cast can again be reinforced, if desired. This is hardly necessary with cement. The finished cast should be at least 1 inch thick. If this is greater than the depth of the track, a wooden box or earthen dam can be built around the track to hold the liquid.

In dry sand, ashes, or dust, a cast can be secured by sifting in very carefully dry plaster of paris, then sprinkling water slowly on to the plaster until it has become thoroughly moistened. When a one-quarter inch layer of cast has thus been set the remaining thickness may be built up by alternately dripping in dry plaster and moistening with water until the cast is thick enough to withstand rough handling. This is the only method of cast making used by the more experienced investigators.

Little of value is in print on the preceding methods of recording footprints. A large part of the above has been determined by original experiments, and quite as much that is new can be learned in almost any line of this work by anyone who will experiment for himself. It is hoped that many law-enforcement men will try experiments in some line of the work and report results for the benefit of all.

If it is not feasible to secure the footprint itself or a cast of it, the best remaining method is to photograph the track. The camera lens must be exactly parallel to the surface photographed, to avoid distortion of perspective. This can be done most conveniently by the aid of a clamp for attaching a camera to a board or other similar support at any required angle. For use in court, the photograph can be enlarged to the exact size of the original tracks. If in photographing, however, a rule is placed alongside the footprint, the scale of measurement will appear in the photograph itself, regardless of the size of the latter.

If no better method is available, draw an exact diagram of the track, on cross-section paper if possible.

For measurements use two lines at right angles through important detail points of the track, and parallel to cross-section lines. The perpendicular distances from any point to these respective lines will then fix its position absolutely.

FINGERPRINTS

Where they can be obtained, fingerprints are valuable as evidence, give absolute identification, and are easy to use.

Latent fingerprints may be defined as those markings, usually rather indistinct, left by oily matter or perspiration exuded from the minute ridges of the fingertip skins upon any substance which the fingers may touch. In some cases, depending upon the physical condition of the person leaving the impressions, as well as upon the article touched, these impressions are visible to the naked eye, while in other cases they appear to be very faint and require development or "bringing out" through the application of powders or other means in order that they may be made so distinct they can be photographed or otherwise preserved.

Searching for Latent Prints

The search for latent prints obviously should be conducted in a systematic, intelligent manner. Concentrated attention would be given to determining the probable existence of prints on such objects as guns, windows or other glass, and other places where they would be most likely to appear. It is desired to stress the point that no object should be removed from its original position or touched with the bare fingers while the inspection outlined is being conducted and that all objects touched should be handled gently. Care should be taken to protect or preserve intact any print developed on any object, which should be wrapped, if feasible. An endeavor also should be made to detect latents which do not overlap or merge, as this affects their appearance and value, defeating the possibility of ridge analysis in many instances.

Development of Latent Impressions

Various powders and liquids, etc., are used in this work. The powders in general usage are a white or gray powder, which usually consists of finely ground

chalk and mercury, and a black powder, which usually has lampblack or charcoal as a base.

The field offices of the Federal Bureau of Investigation use powders of the type described for their work in this particular. They also use finely ground aluminum and bronze powders as well as dragon's blood powder, and a special white powder. These powders may be purchased from a chemist or druggist, although specially prepared powders for fingerprint work are on the market.

It is desired to emphasize that in many instances the latent fingerprint impression appears clearly and it is not necessary that any powder be applied to develop it. The powders are to be used to bring the print to a point where it may be photographed or otherwise developed, and when the print as placed may be photographed, as for example, where a print may show distinctly in the oil and grease on an automobile, no powder should be used.

In addition to the powders, iodine fumes are sometimes used to develop prints which are so latent, usually appearing on paper, that ordinary powders do not assist in bringing them out. Various chemical reagents, such as silver nitrate and osmic acid, are also utilized on occasion, but the use of such methods on original evidence is not recommended unless the operator has had considerable experience with the action of these chemicals. However, powders are generally utilized. It is essential that the problem of employing powders which contrast in color with the surface upon which the latent print appears be given serious consideration, and that at the same time the problem of using the powder best adapted to the particular surface under examination be studied. The black powder is best used on all paper and hard-surfaced or enameled objects of light color. This powder, however, is not adapted particularly for certain white surfaces; for example, it will not adhere satisfactorily to glass. On the contrary, the white powder is well adapted to use on all glass surfaces, while the aluminum, bronze, and dragon's blood powders usually are employed on highly polished or hard surfaces also, such as silverware and metallic objects.

In the actual search for latent fingerprints, a flashlight or the lights appearing in a standard fingerprint camera may be helpful, as the lights reflected from unusual angles sometimes reveal the fingerprints.

When a print is observed and the operative is not certain which of the particular powders in his possession is best adapted for use on the surface where the latent print appears, it is well for the operative to apply finger impressions of his own to a section of a similar surface and then determine which of his powders is most suitable for bringing out these prints. Powder of the same type should then be used on the latent print. Through taking this precautionary measure the operative does not incur the chance of obliterating the prints permanently. This thought must be kept in mind at all times.

When the operative has decided upon the proper powder to employ, a very small amount should be applied to the brush used in the development of latent prints. An excessive amount of powder should never be placed upon a print as it may destroy permanently the characteristic detail. After the powder has been applied to the brush, it should be run very lightly from one side over the print until the characteristic outlines begin to show. Once the said lines assume their definite formations the operative should "brush up" the print by applying the powder either directly across the impression, as in the case of an arch pattern, or with a sweeping or circular motion, in the case of an average whorl pattern. In other words, the operative should try to brush the powder over an impression so the motion or strokes of the brush will conform to the lines of the pattern. This enables the pattern to be brushed without destroying the ridges. Powder may be added where necessary and any excess blown away.

On some surfaces, such as fibrous papers, it is not advisable to employ a brush, the best results usually being achieved by placing a small amount of powder on one end of the object or paper, holding it at a slant, and tapping the same lightly so the powder will pass over the latent print, leaving sufficient particles adhering to bring out the impression. Sometimes latent prints are "set" or "fixed" by the proper application of heat.

Lifting Latent Prints

After a latent print has been brought out with powder and all surplus blown away, the impression may be lifted and preserved in the following manner:

Take a piece of cellulose transparent tape sufficiently large to cover the impression and press it down firmly on the developed pattern. The powder will adhere to the gummed surface of the tape and may then be taken up and placed on a card, preferably of a color contrasting with the powder used. The impression is thereby transferred and is preserved under the transparent tape where it is readily visible for future identification. In some instances the same print may be developed and lifted more than once.

In important cases where the circumstances indicate that a trial is likely, a photograph of the original print should be taken as a safeguard against the possible obliteration or smudging of the print during the lifting process.

The photographic record of the original print will prove to be the safest in court and will eliminate any possible inference by the defense attorneys that the print pattern was altered by the lifting process.

Analysis of Prints and Expert Testimony

After the latent print has been found and photographed, it becomes necessary to locate the actual print corresponding to the latent. It should be borne in mind that usually it is impossible to identify a latent or single fingerprint with prints in a large collection unless some facts are available to indicate the probable identity of the suspect or unless a single fingerprint file is maintained. For example, if a latent impression is forwarded to the Federal Bureau of Investigation, it would first be searched in the file of single fingerprints of kidnapers, extortionists, and notorious criminals, but the Bureau's technical experts, because of limitations of time, are not able to conduct detailed or prolonged searches of the complete collection of fingerprint records in its main files which possibly would lead to the determination of the identity of the offender. However, if the prints cannot be identified in the single fingerprint section, and the names and descriptions of suspects can be furnished and their prints located in the Bureau's files, the latent and inked prints will be

compared by the Bureau's technical experts to determine if they are those of the same individual.

It follows from the foregoing that the obtaining of latent prints, however clear, is generally but the initial step in this work. When obtained, they are valueless unless actual prints can be procured for comparative purposes. When actual prints are obtained which contain characteristics identical with the latent prints, it is customary for the operative to prepare enlarged photographs, whereon the identical points are noted by lines and definitions directed thereto.

Until a man is arrested he cannot be compelled to submit to having his fingerprints taken. His known prints for comparison with those found in connection with a crime must be obtained by getting him to handle a paper on some pretext. If the paper has typewritten matter on it, this may obscure a thumbprint; but the fingerprints will be on the reverse. Such paper must, of course, be free from previous finger marks. It should therefore be drawn from inside a new pile and be handled only by the corners, and between the first and second fingers, as the sides of the fingers leave little mark; better still, use cleaned gloves. When prints can be compelled, as from a man under arrest, they should be taken by pressing the finger on a stamp ink pad and then on paper. Prints should be taken for all 10 fingers. However obtained, each print must be labeled as to finger and hand, since comparison is fruitless unless it is certain that the prints are of identical fingers. Skill in both making and identifying prints requires practice. It is well to acquire such skill before important results depend on the work.

PALM AND FOOT PRINTS

There are a few decisions holding that palm and foot print patterns are as identifiable as fingerprints and such evidence, when properly prepared, is admissible.

FIREARM IDENTIFICATION

Most firearms manufactured today are of the rifled-barrel type. Wherever accuracy of a single projectile is desired over a considerable range, it has been found necessary to cut helical grooves in the inside of the gun barrel during manufacture, so that the

lands or high areas between these grooves will cut into the close fitting bullet which is being forced through the barrel following the explosion of the cartridge, and thus turn the bullet in the direction of the lands, so that when the bullet leaves the muzzle of the gun it is rapidly spinning, giving it greater accuracy, speed, and distance. When these lands within the rifle barrel cut into the soft lead or alloy of the bullet, telltale marks are left on the projectile by means of which the bullet can often be definitely identified with the gun barrel through which it was fired. In a somewhat similar manner exploded cartridge cases can often be identified with the gun in which they were discharged. In the latter instance, the force of the explosion pushes the soft brass face of the cartridge hard against the steel surface of the breechblock. This breechblock, the function of which is to act as a brace against the explosion, will usually have either a tooled or a filed finish.

With the naked eye the rough abrased surface of the metal can be easily observed and when the softer brass alloy is compressed against the hard steel surface a good part of the pattern of scratches on the latter is often embedded on the shell face. Under magnification these toolmarks, whether caused by the cutting of the barrel or the tooling of the breechblock, will be readily seen to be individual.

Because of the great variety of peculiarities, the possibility of reproducing the same abrasive finish at different times on different metals is too remote to permit argument. Utilizing principles similar to those described, identifications can sometimes be effected by microscopic examination of the ejector or extractor marks which may be left on the cartridge case. This is the gist of firearm identification and its value to police investigators is inestimable.

The vast experience of the qualified firearm expert, coupled with the information contained in the reference collections in his laboratory, will often serve as additional aids to the investigator. For instance, the projectile which might have been removed from the body of the victim, in the absence of any other material evidence, can often be compared with standards of ammunition which the expert maintains on file. Of the hundreds of different types manufactured,

practically all are of individual design to some extent; for instance, variations are found in the caliber, the length and weight of the bullet, the color, the alloy content, the jacket, the shape, the number and position of cannelures, and other identifying features.

Thus the expert may be able to advise the investigator as to the exact brand of ammunition used, which information, of course, may be exceedingly valuable—first, because of the likelihood that more ammunition of the same kind is still in the possession of the culprit, which would be a helpful factor in locating and questioning him; and second, because of the possibility that the ammunition, if an unusual kind, might be traced to the culprit through the source of sale.

But that is not all that the firearms expert can do with this apparently insignificant bit of evidence. Prior to the finding of any suspected weapon, the expert, by studying the cuts made on the projectile by the rifled lands, their number, direction, and degree of twist, and sometimes their width and depth, can consult his files of the rifling specifications of the various makes of firearms, and often advise the investigator as to the make and model of the weapon through which the projectile was fired. In such cases the investigator's field is narrowed to looking for a person with a particular kind of ammunition and a specified make and model of gun.

As the investigation progresses and weapons of the type described are brought to light, the firearm-identification expert can compare the evidence bullet from the scene of crime with test shots fired through these submitted weapons for the purpose of determining whether any of the guns fired the evidence specimen.

A cursory examination by the investigator with the aid of a magnifying glass or microscope, if one is available, will often satisfy him of the possibilities of an absolute comparison of the articles in question. However, before any attempt is made to introduce such evidence in court the articles in question should be submitted to some qualified expert for preparation of photographic exhibits. The Federal Bureau of Investigation at Washington will do such work without cost providing it is submitted through the regional office.

The State Bureau of Criminal Identification and Investigation at Sacramento is equipped to do this type of work and has been very cooperative in the past, but we cannot expect them to handle cases where heavy costs are involved.

MUTILATED PAPERS

Restoring Torn Papers

In piecing torn papers together, first hunt for corner pieces, then edges, then work up the interior. Paste on a transparent medium, such as tracing linen—the back may be important—or lay between clean glass plates bound together.

If writing on paper is not in copying ink or indelible pencil, the paper can be moistened by spray from an atomizer or by holding in steam from a teakettle. This helps to straighten it out if badly curled or bent.

Dim writing comes out plainly in a photograph.

Worn or fragile papers can be made indestructible for handling by dipping them into a solution of 1 part stearine in 3 parts collodion, and letting them dry 15 minutes.

Restoring Burnt Paper

Writing is usually still legible. If not entirely reduced to ash, burnt paper can generally be used; but it is very fragile. Lift by passing another paper beneath. Moisten as described above, to remove curl. Slide on to a piece of gummed tracing cloth and very carefully press down. Trim the tracing cloth to exact edges of paper, then piece together as in the case of torn papers. Burned papers are very fragile, even when gummed. The whole process requires skill. Better practice in advance.

Taking Impressions

Relief impressions of raised surfaces can be taken by using moist blotting paper and letting it dry in position. Impressions of more uneven, or solid objects may be obtained by a similar use of a mass of wet tissue paper.

PRESERVING PERISHABLE EVIDENCE

Perishable evidence is often best preserved by placing it in cold storage. It can often be preserved,

also, in alcohol. In the absence of cold storage, formalin or formaldehyde is best for fish or game meat. These preservatives destroy color, however. If this is important, wire the regional forester for advice, stating color and exact nature of material. If it is impossible to preserve any article or evidence, be sure to have witnesses to its finding, and its nature or identity, while it is yet in its original condition.

MAKING USE OF EXPERTS

To the layman one of the most striking services of the expert is that of the microscopist, who deals with a world invisible to the naked eye. He can tell from a hair, for example, whether it is from deer or beef, horse, dog, or human, and the race, habits, and probable age of an original human possessor; from carpet-sweeping dust the number, age, character, habits, food, and recent occupation of, as well as visitors recently entertained by, the tenants of the room from which taken; from fingernail deposits the food, occupation, habits, and whereabouts of the person from whom they were taken, for a week or so prior to that time; and often substantially the same information from a shred of clothing, or even from knives or other articles much handled by him. The microscopist can identify, beyond question, deer or other game meat or blood, as against beef, chicken, etc., and often such things as soil on a boot as being the same as that taken from the locality of a fire or other offense, hair on a blanket as that from a particular horse, or human hair as that from a certain suspect.

The microscopist, chemist, or other scientist, however, is not the only expert who can serve us. The dentist (as to teeth marks, etc.), the shoemaker, the blacksmith, the locksmith, the printer or other paper expert, the observant clothing or dry-goods merchant, or any other man who works in some special line can often tell us more than we can see ourselves with regard to some clue relating to their specialty. The investigator must be constantly on the lookout for chances to make use of such help. Anything requiring expert help of a kind not locally available should be submitted to the regional forester or the matter taken up with him, unless it is possible to get quicker help,

as, for example, in the case of fingerprints, from the experts of the police department of some nearby city.

It should also be borne in mind that expert testimony which is usually in the nature of opinion rather than fact, must be given by the expert responsible for it and not by proxy, and arrangements should be anticipated for his attendance at court.

Chapter IX.—ORAL AND DOCUMENTARY EVIDENCE

Material clues or objects of evidence will seldom or never be all that is necessary to prove a case. If no material clues can be found, the only recourse is to investigate until some person or persons can be discovered who know something about the offense and the offender. This takes time, patience, and skill, often more than the administrative ranger feels he can spare, but it must be done. Sometimes, however, he cannot do it because the whole community knows him, and the guilty ones and all their sympathizers would soon know what he was after. In such cases a special man, whom nobody knows, will probably have better luck, and the assignment of such a man may be requested.

GETTING A LEAD

In deciding to whom to go for possible evidence the best guide is again a carefully built-up mental picture of the case—a working theory.

If possibilities permit, eliminate at once the busybodies who always claim to know all about every happening, and go after those who really know most or were first on the ground. If nothing better develops, figure out a tentative suspect on some ground, such as most probable motive, and start on that basis. If your tentative suspect should not be the right one, questions implicating him are likely to draw from an honest witness indications as to the true suspect when he would not have given them in reply to general questions.

Before doing this, however, it will be desirable to get preliminary information as a protection against witnesses lying or otherwise trying to mislead. It is indispensable, as soon as any real line-up begins to appear, to consider every scrap of information which is at hand or can be gleaned with respect to family, business, or friendship relations of possible suspects, so as to safeguard giving away anything unwittingly. Use

every opportunity to get from fair-minded witnesses information on the trustworthiness and connections of others who must be dealt with.

HELPS TO INTERROGATION

KNOWLEDGE OF MEN

In this work, nothing else can make up for a knowledge of men. A witness will tell nothing or make but inaccurate and unimportant statements to an investigating officer who lacks shrewdness and tact, while the very same witness will make precise, true, and important statements to an officer who can read him and knows how to handle him.

Witnesses can be grouped broadly into two classes—those who will tell the truth and those who probably, or certainly, will not. This resolves itself chiefly into a question of motive. Persons having no interest in the offense or the offender will generally tell the truth; the testimony of those who have such an interest is apt to be prejudiced. However, it should not be overlooked that persons of the latter class may be upright enough to tell the truth if questioned, while fear of unknown consequences may swerve a disinterested witness from the path of truth.

Another group of truthful witnesses is made up of those who are reluctant to testify. Most people are of the latter kind. The average American not only has an exaggerated unwillingness to testify against a wrongdoer but is himself so busy that he does not want to get mixed up in other people's troubles if he can avoid it. The person who is anxious to tell on another has usually some grudge, and the influence of this on his testimony must be carefully weighed.

You can help your own judgment of men by systematic study, in your everyday business, of truthfulness, the motives of untruthfulness, etc. A careful study of cases where you believed and were mistaken will reduce your own credulity. Lack of truthfulness is very common, and a man who fails to state the exact truth is not always in league with crime.

Study of previous testimony of a lying witness helps. A man nearly always sticks to the same lines of mental side-stepping in such things as justification of his own conduct, and throwing suspicion on others.

ATTITUDE OF OFFICER

Much of the success to be gained depends upon the investigator's attitude. Judge your man. Be short, snappy, commanding with the bold; patient and considerate with the timid. Unnecessary officiousness or insolence or contempt, however, will shut up most men like a clam. Courteous and considerate treatment will open a man's heart—and probably his mouth—especially if others have just treated him harshly.

WHO SHOULD DO THE INTERVIEWING

The same investigator should ordinarily handle all the main issues of a given case. This applies especially to the principal interviews. After a case once takes shape, success depends so much upon a comprehensive knowledge of everything previously developed that important issues cannot safely be divided.

INTERVIEWING TRUTHFUL WITNESSES

GETTING THE WITNESS TO TALK

Few witnesses are anxious to talk to an investigative officer. Getting a man to the point where he will talk freely can often be accomplished more easily by directing the conversation along lines in which he is personally interested, even though at first this has no connection with what you want him to talk about. If he still does not tell what you believe he knows, it may be that he fears you want to mix him up in the crime. Such a suspicion should be guarded against, when unfounded. Antagonism can often be avoided by stating to the witness that you have been requested by headquarters, or are required by regulations, etc., to get the facts in this case, and will greatly appreciate it if he can tell you anything about it—thus putting it on the basis of routine duty, and dispelling any suspicion that you want to implicate him. If the reluctance is due to fear of the suspect, or desire to avoid the notoriety or loss of time incident to court testimony, and cannot be overcome in any other way, say to him that, if he will tell you what he knows, you will only use it as a clue, without divulging its origin; but that, if he will not, he will have to go on the

stand and tell it in front of the defendant. The use of good evidence in whatever way seems best should not be hindered by such a promise unless absolutely necessary; but information obtained in the way indicated may be extremely valuable, and "half a loaf is better than none.'

GETTING THE STORY

There are two considerations: (1) To get as complete a statement from the witness as possible—be sure nothing essential is omitted, but do not let him ramble aimlessly; (2) to be sure he is telling the truth. The latter may not follow, as a matter of course, even with willingness on his part.

The best safeguard is a clear mental picture of the case which shows what it is necessary to get, and thus prevents the omission of important items. The six watchwords of a complete case are again valuable reminders.

The method to be used depends much upon the witness. Unless he wanders beyond forbearance, it is best to let him tell his story straight through in his own way. Then question and requestion until it is certain that he cannot or will not add anything more of value. Take sufficient time, no matter how much of a hurry you are in. Better not start the interview in the first place than be in too much of a hurry to permit of getting the facts.

Write the story all down as it is told, unless the witness shies at that, in which case do it at the completion of the interview. Opposition to having a statement written down may often be lessened by the statement: "Now, I'd like to put this down, so that I can include it in my report, and I will not quote you incorrectly." If rightly handled, he will doubtless help you to get it all straight and can then hardly refuse to sign it. A much more complete and satisfactory statement will ordinarily be obtained by thus writing it yourself than by letting the witness write it.

Read to the witness what you have written, word for word; ask him if it is correct; change any items which he may desire corrected; have him sign it, and have his signature properly witnessed.

In case a witness refuses to make or to sign a written statement but will talk, get him to tell his story in the presence of several reliable witnesses.

Afterwards write down, either yourself or in collaboration with the others, who will swear to it in court, the essential substance of his statements, as nearly verbatim as possible.

In addition to the record of what was said, put down in your notebook the circumstances of the conversation, persons, witnesses, time, and also all the conclusions for future guidance which you can draw from the facts thus learned.

Some men cannot be induced to make a statement, but say that if they are put on the stand they will tell the truth. If their resolution not to talk cannot be shaken, the only thing to do is to get as good an idea as possible of what they can testify about.

LEGAL BEARINGS

Verbal statements are greatly strengthened by corroboration. As a general rule, testimony by another as to conversations can be used in court only to impeach a witness or, under proper circumstances, to establish an implied admission by the accused when it appears that such conversations occurred in his presence and hearing.

UNINTENTIONAL OFFENDERS

The general methods indicated for truthful witnesses apply largely to this class of trespassers, such, for example, as those who thoughtlessly leave campfires burning. Courteous treatment and an evident purpose to do only one's duty, with regret for the inconvenience necessarily inflicted, will often induce confession. If more is necessary to achieve this result, it should be remembered that every man has a weakness through which he can be approached, or through which his defense can be battered down. It may be a hobby, such as horses, automobiles, guns, or some sport, or politics, religion, reputation, even home or mother. Whatever it is, the officer is justified in using it to get to the truth when men have violated the law and are attempting to conceal the truth.

Ordinarily, only if the offender has shown criminal disregard of known danger, or if the unintentional offender becomes hostile or defiant, is anything gained by using the more drastic means discussed under Hostile and Lying Witnesses. The man who has set a fire

unconsciously is an unprofitable man to interrogate because he has no guilty conscience.

If an offender is found on whom you have sufficient evidence, and he objects to being taken before a magistrate, a good expedient is to ask him if he is guilty; if he denies that he is guilty, then he has no valid ground for objection.

INACCURACY IN TESTIMONY

CAUSES OF INACCURACY

When a man is willing to tell the truth, untrue statements may result from the following causes:

(*a*) *Poor observation.*—A man may see only part of a total action and have a very inadequate or mistaken notion of the whole; a man sometimes sees what he expects to see; people often hear imperfectly or mistakenly.

(*b*) *Poor comprehension and reasoning.*—Inference is a part of every mental operation. When we see a clock face, we take it for granted that a clock is behind it, but this is not necessarily true; a tenderfoot thinks mountains are much nearer than they are, because he infers the distance which the given appearance implies in low country; illiterate people distort long sentences, and piece out by inference to a twisted meaning.

(*c*) *Poor memory.*—This is very common. Beware of a person who claims to remember everything; his testimony is usually open to suspicion. Memory can be helped by talking of the event in question, often of unimportant incidents or of a man's occupation connected with the thing to be remembered. But give him time; do not hurry. Do not press an emotional witness too far; there is real danger with such a person that you may make him remember what he never saw or heard or knew, except through your forcible suggestion.

(*d*) *Influence of other people's statements.*—Untrained persons who have seen or heard part of an exciting incident unconsciously try to complete the matter by fitting what they have seen or what they know to details told by others. They may even end, without untruthful intent, by weaving the whole garbled mess into their own story as to what they saw and heard and know.

(*e*) *Strong feeling.*—Excitement and fear often lead to exaggeration in which important details are sometimes overlooked.

(*f*) *Temperament, age, occupation.*—A ranger looking at a herd of cattle sees also whether the range is overgrazed, or grazed in patches because of poor salting or water development. A city man sees cattle, but not the other factors, and could not be expected to give an intelligent statement on such matters.

(*g*) *Fear of consequences.*—Be sure to relieve a witness's mind of a possible impression that you want to implicate him, etc., if such inferences are without cause. Frightened people, imagining themselves suspected, always shuffle in testimony. This should be a danger signal, although the cause of the shuffling may not always be the one here discussed.

(*h*) *Poor questioning.*—Good questioning requires hard thinking. Be sure nothing is missed. Follow your own course and do not be led or pushed, either designedly or accidentally, by the witness.

INCREASING THE ACCURACY OF TESTIMONY

Much can be done by careful questioning and suggestion to clear up obscure statements or to supply omissions. Check the witness's accuracy; that is, as to height of people, ask him if the man he mentions is as tall as yourself; check distances by asking about something in sight; verify his power of recognizing persons, estimating numbers, etc. It is sometimes necessary to verify statements independently of the witness. Scrutinize the witness's testimony all the time for indications of intentional untruthfulness.

INTERVIEWING HOSTILE AND LYING WITNESSES

PREPARATION FOR THE INTERVIEW

For successfully interviewing this kind of witness thorough preparation is indispensable. Nowhere else is preliminary knowledge so essential both as to the connections and interests of the witness and as to your case and exactly what you want to find out. Finally, the circumstances and conduct of the interview itself must be carefully planned.

If you can prevent it do not interview such witnesses, especially suspects, on their own ground or among their own friends. Get them to come to the supervisor's or ranger's office or to a convenient room in town; at least to a place away from the support of their familiar surroundings and people. This may not be feasible at the first interview; but if you are convinced, or become convinced by talking with them, that they have knowledge of important facts which they have an interest in keeping from you, it is often wiser to postpone the serious attempt to get these facts until it is possible to do so under more favorable circumstances. On the other hand, it is desirable to question such witnesses, when possible, before they learn that they are suspected and have time to talk to each other. At least try to prevent communication between the witnesses until you have questioned them separately. Special care must be exercised to interview a group of related witnesses in the best order to prevent collusion between them. It is usually best not to interview two or more hostile witnesses together. Keep them apart and interview them separately whenever possible.

Always conduct interviews with an enemy to your case strictly as an official. Be courteous, but do not introduce everybody all round, or joke, or in any other way help to put the witness at his ease. Especially when the time has come to hammer hard for the facts or for a confession, it greatly helps to surround the occasion with as much circumstance and formality as you can bring to bear. Have your own witnesses and assistants at hand; the more of them who are unknown to the person to be interrogated, or known only as officials, the better. A witness who is either the suspect or his accomplice or sympathizer, as is here assumed, will deceive you if he can and will not tell you the truth unless you can entangle him or otherwise bring pressure enough upon him to compel him to do so. One of the most valuable helps in this is to increase his nervous tension by every legitimate means.

Keep your notebook out and take time to record everything necessary or significant. Write down a minute description of suspects. This may be valuable to you and should form a part of the case record in any event. If you ask the witness, in connection with this record, for his age, and make other perti-

nent points, it will usually help to increase his sense of the gravity of the case. Mental states go in waves, however, and it is possible to overstay the crest. The effect of everything upon the witness should be carefully watched and the right moment seized to go ahead.

THE INTERVIEW

This is always a test of wits, but the investigating officer has the whip hand, since the witness is usually playing a dangerous game which affects his calmness. Falsehood involves a frame-up. The necessary thing is to get behind the frame-up. The means by which this can be done is thorough questioning; perfunctory or aimless questioning will not do it.

Unless the witness has previously made a statement or has refused to talk, it is usually best at first to let him tell his own story in his own way. If he is interrupted, he will begin to trim what he says accordingly. This statement should be signed and witnessed, as in any other interview, even though the investigator knows it to be a mass of falsehoods.

Then commence to question. In most cases interrogation should begin at a point a considerable time previous to the offense, and lead step by step in minute detail through it. The frame-up of a false case practically always revolves around an attempt to establish an alibi, and the easiest way to break this down is to question minutely about details—how long together, how seated, what said, order in which things occurred, etc. When the alibi is true except as to date, get outside of it by connecting with dates some distance from the ones in question.

As soon as you reach a point not contemplated in the frameup, contradiction will begin, which gives the officer a lead. In case a witness refuses to talk, show him that you have something on him. This will almost always start him to explain; then it is comparatively easy to keep him going. When sure enough of your ground, you can begin to jump him directly with what you know to be false. Do not ask him if he did thus and so, but say: "You say you did thus and so?" and make him say yes; than, "I know better—you did thus and so." Make it clear that he cannot string you; not by asserting it but by demonstration.

With some types of men, however, ground can be gained by even more severity; that is, "What do you mean by lying to me?"

To break the continuity of a man's frame-up thread is one of the greatest helps in getting the truth. To this end let questions skip around the story—to the end, then to the middle, and so on; occasionally jump to something outside of or beyond his story.

In general, look for motives of lying—relationship, friendship, business connections, etc. Scrutinize the testimony itself; see how he colors other people, favorably or otherwise, as an author paints his hero or villain in advance of actual deeds. It is important to build a mental picture of the witness's story as fast as he tells it. This will show discrepancies not at all apparent from mere words; that is, witness may say his house was in danger of burning, but your mental picture shows that with the wind as already given, or as you know it to have been, his house was on the windward side of the fire.

All statements should be reduced to writing, if possible, over the witnessed signature of the person questioned.

THE SUSPECT IN INTENTIONAL OFFENSES

The written-out statement of an accused or suspected party should be followed by a statement that the foregoing is made by him voluntarily, realizing that anything which it contains may be used against him.

In addition to the above methods, if there is any possibility of a suspect having a previous criminal record, the questioning should in his case go back as far as is necessary to include it, even to his childhood or birth. This serves two good purposes. If he has any previous criminal record, the questioning may open the way for prosecution on some other offenses if the intended one should fail, and with hardened criminals it should be a rule to get them on something, if possible, even if not on the offense under immediate investigation. Nothing will serve better to give this kind of man a wholesome incentive to refrain from violating the laws. Furthermore, if there are shady spots in his record, close questioning

will certainly make him nervous about them. He will forthwith be uncertain how much you know all along the line, and his nervous tension may materially help to bring out the truth as to the case in hand.

When the guilt of the suspect has been established to the satisfaction of the investigator, the chief object of such questioning becomes the forcing of a confession and a plea of guilty. Work to get him into the belief that you know all about his part in the offense. If you do not know as much as you lead him to believe you do, it is vital not to make a slip which will show him what information you lack. When used judiciously, one is justified in taking some chances of this kind to gain an advantage and land a confession. When a case gets to court, it must be complete and watertight; but up to that point the game is yours, to make by any fair means you can.

But here a caution: A much longer chance in this direction can, in general, be taken in campfire than in incendiary cases. Offenders of the former class are usually less independent, in fact, of representatives of the law, and they are usually nonresidents of the forest community. The incendiary, however, is usually a resident; he has less fear of an officer; and, by reason of having planned his act beforehand, he is definitely prepared to beat you at the game and is likely to know what you can and what you cannot do. If you lose through having bluffed and failed, it may set you and the Forest Service back very seriously in the community's estimation.

THREATS AND PROMISES

Both of these must be scrupulously avoided, since either one will completely invalidate a confession in court. Even the use of the words that it will be "better" or "worse" for the suspect to do a given thing must be avoided. If a suspect shows a desire to seek immunity or clemency as a preliminary to confessing, it is legitimate to state that you will be willing to say a good word for him if he makes a clean breast of it, but promise nothing as to final action.

In any event, play clean. Neither self-respect nor the respect of the community in which you must work and live should be jeopardized by resort to questionable practices.

USE OF THE LAW ON PERJURY

For persons who persistently refuse to confess, or admit the truth, the following is often effective: Referring to your notes of their conversation, say, "Are you willing to make an affidavit that you are not guilty in this case?" Or, if this has been done: "You are still going to swear to this in court?" Then: "You probably know the Federal law on such testimony?" Read aloud the penalties provided. If they have lied, this seldom fails to start them hedging, and finally to bring a confession. Care must be used, however, not to give them any comeback in court by doing this as a threat. It is always an officer's right to inform persons of the law.

KEEPING TEMPER

Always keep your temper. A man who loses his temper is at the mercy of a cool opponent. You cannot afford it, no matter what the provocation; the accused may be trying to "get your goat."

VALUE OF CONFESSION

A confession is not admissible in court unless it is made of the prisoner's own free will, free from promise or threat, and without misapprehension as to its possible use against him. For these reasons it is always liable to successful attack by the defense, even if the accused does not repudiate it in court. The latter contingency can be guarded against by having a witness to the making of the confession; because in the event that the prisoner is discharged by the court, it may then be possible to convict him for perjury. Whatever the fate of the confession itself, it should always be obtained, or tried for, since it may bring out valuable admissions or facts, which can then be run down and established by independent evidence, making them as valid as any other facts similarly established. The established contradictions of a confession will likewise be of the greatest value in court. After getting a confession, the questioning should be continued, to obtain such facts, if they have not already been obtained. If you can stay friendly enough with the suspect to get him to tell you just how the deed was done, not only will this object have been attained, but you will have reinforced your own knowledge of crim-

inal methods and motives. Write down all such conclusions and lessons for future guidance.

IDENTIFICATION OF PERSONS

Forest officers usually know local incendiaries, but they may need to spot persons unknown to them, such as hunters or campers responsible for fires.

The face, of course, is most relied upon. The main point of the identification method used by experts, and the one most often overlooked by laymen, is careful study of details. Not only color of hair and eyes, general shape of head and face, whether clean shaven or otherwise, must be noted but also contour of ears, rims, fleshiness and amount of lobes, and angle made with head (including aspect from behind); contour of chin and jaw from front, protrusion or recession in profile, "double" chin or otherwise; type of mouth, perculiarities of teeth, thickness of lips, peculiar twists and habitual surrounding lines, if any, and characteristic expression; contour of nose, both front and profile, especially character of its point, and width, flare, and exposure of nostrils; eyes close or wide apart, how framed in head, size, external peculiarities—such as character of lids, appearance of cornea, size of pupil, and especially behavior and expression of the eye; color, thickness, length, and disposition of the eyebrows, especially how nearly they meet across the nose; contour and slope of forehead, especially any prominent bulges over eyes, etc., and characteristic wrinkle marking; outline of edge of hair and its manner of growth; moles, warts, wens, scars, or other peculiar markings. These, of course, are in addition to the manner of carrying the head, and other characteristics, which give much aid in identification.

When it is a question of identification from an indistinct photograph, or one several years old, the most unchanging items are the following: Angle of spread of ears and conformation of their lobes; type character of mouth and lips; conformation of end of nose, spread and exposure of nostrils; width apart of eyes; degree of approach of eyebrows across the nose; characteristic bulges of the forehead, if any; and the peculiarities of the hair line (barring change by baldness, which is usually discernible if present). These features, too, are the most useful for detailed verification of an identification from description, and should be ob-

tained for such a description, in addition to the common items of age, height, weight, complexion, eyes, hair, beard or mustache, birth or accidental marks, clothing, carriage, gait, and general appearance.

Few persons can give a good description without coaching. Even if asked whether there are any noticeable peculiarities, they are likely to say "No," and yet, when asked about eyes, nose, mouth, ears, or hair, they will remember something useful. Ask also about the specific points discussed above.

PLAIN CLOTHES WORK

Forest officers will have only infrequent need to use the police supplemental devices to identify suspects, so that only a suggestion or two will be indicated here. An officer usually first follows and studies the suspect from behind, then gets ahead and comes to meet him. If he is sure enough, he accosts him by his real name, watching closely for response. No matter how a man steels himself against it, it is almost impossible to avoid some visible surprise response when an alias hears his true name called unexpectedly. If the officer is not ready to show his hand, he often follows a few feet behind a suspect, with an assistant a little behind him; the first officer then calls the suspect's name sharply and dodges inside a doorway. If the suspect turns, he does not see the officer, and the assistant when he passes the door can tell the latter whether the suspect has betrayed any response. In shadowing, most police officers prefer to keep to the outside of the walk.

VALUE OF REWARDS

Considerable help in the fire situation can be given by greater publicity in regard to available rewards for assistance leading to convictions. Nearly every community has a would-be Sherlock Holmes, and many such men would work faithfully on forest cases and be valuable allies, once they definitely know that they stand a chance of getting a reward commensurate with the time spent. If so, let them have reward and credit both; results are of first importance, and no forest officer's official credit will be lessened because of such an outcome. (See regulations on rewards, pp. 16, 36.)

Chapter X.—ACTIONS UNDER LEGAL PROCESSES

AFFIDAVITS

Most forest officers are already familiar with the making of an affidavit. This cannot be used directly as evidence, but is useful for the moral effect upon the witness as to the gravity of the testimony covered by the affidavit; it also safeguards this testimony by allowing a basis for cross-examination should the deponent later repudiate his statement.

ARREST, COMPLAINTS, AND WARRANTS

Under the acts of Congress of February 6, 1905 (33 Stat. 700) and March 3, 1905 (33 Stat. 872), forest officers have authority to arrest upon warrant any person charged in a proper complaint with violating the Federal laws or regulations relating to the national forests. For offenses under the State law, forest offiers have authority to arrest on warrant only after having been appointed deputy State fire or fish and game wardens.

For offenses committed in their presence, forest officers have authority to arrest without warrant, in case of either Federal or State offenses.

WARRANTS OF ARREST

For State offenses, warrants must be obtained from and returned to a State magistrate; that is, justice of the peace, police magistrate in towns or cities, judge of the superior court, or justice of the supreme court.

When the name of the person who committed the crime is not known, the magistrate can, for satisfactory cause, issue a John Doe warrant.

In Federal cases arrest should be made in advance of indictment only when this is absolutely necessary to prevent the escape of the accused, or when the offense is committed in the presence of the arresting

officer. For the reasons for this statement see Preliminary Hearings, page 92. Federal warrants should ordinarily be procured from the nearest United States commissioner. If it is impracticable or unduly expensive in time or money to reach a commissioner, warrants in Federal cases may be obtained from a justice of the peace or other officer mentioned in section 1014, United States Revised Statutes, which is as follows:

> For any crime or offense against the United States the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate of any State where he may be found, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

COMPLAINTS AND INFORMATION

Warrants for arrest from a justice of the peace are issued on complaint sworn to by a responsible person, upon a showing of probable cause sufficient to satisfy the issuing magistrate. The officer seeking the warrant should be able to show facts and evidence, if necessary, and not merely information and belief. However, it is well not to divulge enough to expose one's hand in the prosecution of the case.

The complaint must designate the specific offense committed and specify the statute and section violated, with such particulars of time, place, person, and property as to enable the defendant to understand clearly the character of the offense charged. Extreme care should be used in drawing the complaint, since not only the arrest but the case in court will be based upon it. In the wording of the complaint the language of the law invoked should be closely followed. Include only what you are sure you can prove; in a larceny case, for example, the exact items and numbers charged as stolen must be proved or the case will fail. Charge the easiest offense to prove; that is, having game in

possession out of season, rather than killing, unless evidence on the latter is ironclad.

Each offense of the same general nature under separate subsections of the statute should be made a separate count. Also, when more than one offense included in the same subsection is to be charged, charge always in conjunctive; that is, "did kill and have in his possession," not "kill or have," etc. If several men are taken for one offense they should be charged jointly, since this saves time and expense in multiplication of cases.

In misdemeanor cases under the State law the complaint must be filed within 1 year from the date of the offense.

In case a justice of the peace or county judge refuses to issue a warrant when so requested by a forest officer on valid grounds, or expresses hostility to the enforcement of the fire, game, or other laws, fines below the minimum, or otherwise fails to give proper official attention to such cases, the matter should be reported to the regional forester and will be taken up with the State attorney general.

A United States commissioner issues a warrant for arrest in Federal cases upon sworn information. Care should, of course, be used in keeping this free from defect.

SERVICE OF WARRANTS

Constables, sheriffs, etc., are the authorized agents of the courts in serving legal processes, and since their fees result from their performance of this work, not only can our own time and expense be saved but often better relations with these men can be maintained by turning over such service to them. Ordinarily such action must be followed.

However, do not ask or expect them to work up your case for you. You are the investigator and that is your business. In the past much apathy to fire-law enforcement on the part of public officers has resulted from half-baked cases or simple pieces of rumor or gossip being taken to a justice or sheriff or prosecuting attorney in the apparent expectation that he would do all the rest and present us with a conviction and his thanks. Forest officers, however, are gaining the reputation of presenting well worked-up cases. Nothing will more surely gain the cordial co-

operation of public officers all along the line and, indirectly, of the communities which they influence.

After swearing out the complaint, it is usual to ask the magistrate when the arrest can be made, and, unless it is already known to the complaining officer, by whom. This enables the forest officer to keep in touch with the progress of his case.

LIMITATIONS UPON SERVICE

A warrant of arrest is, in general, to be served only within the jurisdiction of the issuing magistrate or officer, unless otherwise specifically authorized upon the warrant. A warrant issued by a justice of the peace may be executed anywhere in the county where issued.

If the defendant is in another county, the warrant may be executed therein upon the written direction of a magistrate of that county, endorsed upon the warrant and signed by him with his name of office and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the county of ———"; but this endorsement can be made only when the warrant is accompanied by a certificate of the clerk of the county in which the warrant was issued, under the seal of the superior court thereof, as to the official character of the issuing magistrate, or upon the oath to that effect of a credible witness, in writing, endorsed on or annexed to the warrant. When it is foreseen that service of such a warrant may be necessary in another county, the county clerk's certificate above specified should be secured, if not too inconvenient; when this has not been secured the alternative personal statement above provided for can usually be made by the forest officer himself, on the credentials of his badge and official position.

A warrant of arrest for a felony may be executed at any time of day or night. For a misdemeanor, arrest can be made only in the daytime, unless night service is specifically authorized in the warrant. Daytime, for such purposes, is defined as from sunrise to sunset.

SERVICE BY TELEGRAPH

Under the State law a justice of the supreme court or a judge of the superior court may, by an endorse-

ment upon the warrant of arrest, authorize the service thereof by telegraph, sending an authenticated telegraphic copy thereof, which is then as effectual in the hands of an officer as the original. Similarly, a Federal judge may authorize the service of a warrant in a Federal case by telegraph.

THE ARREST

Arrest will not ordinarily be made by a forest officer unless the violator is likely to disappear. Arrest is made by an actual restraint of the accused or by his submission to the custody of an officer. The prisoner is usually, and on demand must be, informed of the cause of the arrest and the authority to make it, and shown the warrant when acting under a warrant. An officer acting under a warrant may use all necessary means to effect the arrest if the accused resists or flees after being informed of the intention to arrest him. He must not, however, be subjected to any more violence or restraint than is necessary for the arrest and detention. In fact, all unnecessary officiousness or unpleasantness should be avoided, since, as a rule, much more can be won from a well-treated prisoner, and there will be no chance for his attorney to bring charges of bulldozing. An officer making an arrest may orally summon as many persons as he deems necessary to aid him, and refusal to render such aid is a punishable offense. A United States commissioner can summon any necessary county, State, or Federal assistance to apprehend the person or persons for whom his warrant is issued.

When an arrest is made, the person arrested should be searched, unless he is willing at once to plead guilty. In this work the value of search is not so much for dangerous weapons as (1) to secure articles which may afford good evidence, especially miscroscopic evidence in the case of articles, such as knives, which have been much handled by the suspect; or (2) for the effect of the search in impressing the suspect with the gravity of the case, which is especially valuable if arrest is to be followed by "sweating." An additional aid with regard to the second point is the taking of a personal description of the suspect, which may well be done at the time of arrest. Search of a person under arrest requires no separate search warrant.

Peace officers making arrest on authority of a warrant, or when an offense is committed in their presence, are protected from any action for unlawful arrest. In the case of forest officers this protection will be invoked to the full by the regional office.

RETURN OF WARRANTS

When an arrest has been made the prisoner must usually be returned to the magistrate or other officer who issued the warrant.

In State misdemeanor cases, when the defendant is arrested in another county, the officer must, if required by the defendant, take him before the magistrate in the latter county, who must admit the defendant to bail. When such a demand is not made, or if bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant as above provided.

When arrest is without warrant, the prisoner must be taken before an appropriate magistrate as soon as practicable after arrest. In State misdemeanor cases this must be before the justice of the peace of the township within which the offense has been committed.

On arrival before the magistrate a proper complaint must be executed. Whether a warrant shall be issued upon it is subject to the discretion of the magistrate, in view of the course thereafter to be pursued. If a warrant is issued, its return is made simultaneously with its issue.

When a prisoner is brought to a State magistrate of final return, in cases over which he has trial jurisdiction, the charge is read to the defendant, and, if he pleads guilty, he may be sentenced forthwith; otherwise a trial is had or future date set for it.

In a Federal case, when arrest is made without a warrant, the person arrested should be taken before the nearest United States commissioner, then before a justice of the peace or other officer mentioned in section 1014 of the Revised Statutes. As in the previous case, return of warrant is made simultaneously with its procuring.

When a warrant for a Federal offense is returned to the United States commissioner, or magistrate, as

previously provided, either upon previous issue or arrest without warrant, the accused, after preliminery hearing or if that is waived, is bound over to the Federal court. If he is unable to give bond, he must be delivered to the United States marshal. On a commitment properly issued by the magistrate or United States commissioner, the prisoner may be turned over to the sheriff and the marshal notified to take charge.

SEARCH WARRANTS

A search warrant may be secured by a forest officer with peace powers on his affidavit, from a justice of the peace or any other magistrate (United States commissioner in Federal cases) for the search of any premises thought on reasonable information or belief to contain articles which it is desired to seize, or to examine, against the owner's will. A search warrant is equally as necessary to enable an officer to lead out a man's horse and take measurements of his tracks, if the owner objects, as it would be to permit the seizure and removal of the animal. Strictly speaking, the same applies to search of a man's pack, or buggy, or automobile for evidence of having set a fire. An automobile may be searched without warrant, however, if there is probable cause, based on reasonable grounds, that it contains evidence of the offense committed.

A search warrant must specify the exact premises, person, or owner and articles involved. Barns or outhouses, for example, cannot be searched on a warrant specifying the house only. If, in searching for certain articles for whose seizure a warrant has been obtained, other desired articles are found which the warrant cannot be construed to cover, another warrant must be obtained for their seizure.

Search warrants can be executed only in the daytime (sunrise to sunset), unless night service is specifically authorized by the issuing magistrate in the warrant. Entry of premises or buildings may be effected by forcible means if necessary, but no more force must be used or damage done than is requisite to accomplish the entry and search as authorized by the warrant. For all articles seized, the officer must give

a receipt. It is always desirable to have outside parties other than forest or police officers present at a search, if possible, the proprietor or members of his family. This is a valuable safeguard against possible trouble in court.

In search by appropriate means under a duly issued warrant the executing officer is protected, even though it should develop that the search was made on misinformation; but he would be liable for the exercise of unnecessary violence or for damage.

Permission can sometimes be obtained to search without warrant by an officer clearly entitled to obtain such a warrant, especially if the person whose premises it is desired to search is amenable to the consideration that, even if one is innocent of connection with any offense, subjection to proper search is one of the duties of citizenship in aiding the processes of the laws which protect all. If he still hesitates, ask him point-blank if he is concerned in the offense and on his denial, point out that such denial constitutes the reason why he should not object; that objection will only give you the trouble of getting a warrant and will justify a suspicion which will necessitate a more thorough search.

If a search of premises is made without warrant, with the owner's permission, and anything is found which it will be desired to use in court, a warrant for its seizure should be obtained as soon as possible after thus actually seizing it; or if there is no danger of its being removed and secreted in the meantime, the seizure itself should be postponed until such a warrant can be obtained, on order to forestall the attorney for the defense making trouble, or causing annoyance in court upon this point as a pretext.

SERVICE OF SEARCH WARRANTS

Section 1530 of the California Penal Code provides as follows:

A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

It is not intended that forest officers should serve State warrants—either of arrest or search—when local peace officers are available for that purpose, except in

cases of extreme emergency to prevent the escape of the person to be arrested. If circumstances justify such action by a forest officer, he should request the court to direct the service of such warrant to him.

EXPENSES IN CONNECTION WITH LEGAL PROCESSES

Forest officers will be officially reimbursed for all necessary expenses incurred in accordance with the fiscal and administrative regulations of the Department of Agriculture in the transportation of arrested persons to custody, or for necessary subsistence of such persons at hotels, etc., or for necessary expenses in the execution of any other necessary legal process for which no other authorities can properly assume responsibility in the prosecution of violators of the laws or of the regulations of the Department of Agriculture in national forests.

Where it is necessary for arrests to be made by forest officers for violations of Federal laws or regulations, without any process being issued, either by way of warrant or commitment, the expenses of the prisoners are payable from Forest Service funds until such time as the prisoners are turned over to the regularly constituted authorities. The expenses may be paid in cash by the forest officer and included in his expense account. The means and lodgings must be itemized in voucher, charges for lodging being supported by subvouchers.

As has previously been pointed out, however, expense, as well as the time of forest officers for other needed duties, can often be saved to the Forest Service by making use of sheriffs and constables for the serving of warrants, subpenas, and other such assistance. In particular, the hiring of men for posse needs or to accompany officers for identification of witnesses, in State cases, can appropriately be assumed by the counties, and such expense should be transferred to them by the above means when it is feasible to do so. If it is necessary for a forest officer to bring in a witness, the latter should pay his own expenses if possible. Either the forest officer or the witness can in such duly authorized cases be reimbursed by the court under the conditions imposed by law; but no reimbursement for expenses in connection with witnesses

can be made by the Forest Service. Certain other expenses in connection with the trial itself can sometimes be assumed by the sheriff or the United States marshal, as the case may be, or by other agencies of the administration of justice. It is impossible to make general instructions which will fit every contingency. In case of any doubt, specific advice should, whenever possible, be sought before incurring the contemplated expense.

Chapter XI.—PREPARATION OF THE CASE

PREPARING THE MATERIAL

When all possible or necessary evidence in a case has been run down and the necessary witnesses provided for, with a definite understanding of just what each will testify to, all these facts in the case must be put into systematic and workable shape.

REPORT ON FORM 874–20

The first thing required is the report on Form 874–20, in accordance with the National Forest Trespass Manual.

THE WORKING MEMORANDUM

For the purpose of the case in court a somewhat different organization of the material will be desirable, for which approximately the same form will apply, whether it be prepared for conduct of the case by the forest officer, which he will doubtless be called upon to do in many justice's cases involving no legal difficulties, or as a memorandum for the district law officer in more important or difficult cases.

Several persons may be prosecuted together for the same fire, or any one alone. Separate fires, especially if on separate days, should be reserved for separate cases, so as not to have used up all ammunition if the defendant is unexpectedly acquitted on the first one. one.

THE MAIN CASE

Arrange the material so that it tells the story in chronological order. Confine the main case to the material essential to a clear and complete chain of evidence. This gains the advantage of clearness of impression on the jury; too great a mass of evidence may muddle the main issue in their minds. Any addi-

tional material should be carefully worked up with a view to its use in rebuttal or in connection with surprise defenses as discussed below.

Have your record perfectly clear as to exactly what part of the chain the testimony of each witness and each piece of documentary evidence will cover, and just what link each exhibit will support. Avoid repetition as far as possible. Whenever it is necessary to mention again something already related, simply refer to it, with the page on which it first occurs. If your record is to be used as a memorandum for the district law officer, the reviewer, if without other knowledge of the case, may otherwise have difficulty in determining whether such an incident is a new occurrence or one previously related.

REBUTTAL

In rebuttal one should anticipate what defenses may be set up and provide in advance for meeting them. The defendant will usually try to introduce testimony contradicting that of the prosecution, but he may put in evidence unexpected facts tending to explain away or otherwise refute the evidence of the prosecution. The cross-examination offers the first opportunity of nullifying such evidence; if this cannot be accomplished at this point, the prosecution may need new testimony to impeach the credit of the defendant's witnesses.

APPENDIX

A list of the witnesses, with brief notation of the exact facts to which each will testify, together with all documentary evidence and a list of exhibits, should be collected in an appendix, each separate item being designated by letter, as, for example, "Exhibit A." At the appropriate points in the narrative record these documents, etc., should be referred to only by exhibit designation. This helps both in completeness and in keeping the narrative clear.

OUTLINE

A good outline on which to get material together is the following:

1. The offense—what, where, when, how, by whom, why.

2. Information.
   (*a*) Rumors.
   (*b*) Clues.

3. Main evidence—the facts, in order, with names of witnesses who will testify to them, as shown in detail in appendix at end of report.

4. Evidence available for rebuttal or to meet possible surprise defenses.

5. Appendix—as above.

USE OF MAPS

THE TRESPASS MAP

The trespass map must show completely the facts of trespass and damage suffered. It should include, therefore, land section, township, and range; boundaries between national forest and other lands; drainage; roads; houses and culture bearing on the case; area covered by the trespass; and, in case of fire, its origin with respect to forest-land boundaries; cover species or type, and size of lumber; and nature and extent of damage. The investigator should not be required to make this map, it can be done by others, as, for example, rangers in charge of suppression. When necessary on account of close questions of boundary, the regional forester will send an expert surveyor to make a transit survey.

THE COURT MAP

The map to be presented in court should be on a scale large enough to be legible when hung up so that the jury can all see it at once, since it is much more effective when used in this way. It should be confined to the data essential for the purpose, but it should show this with the utmost clearness. Its legend should give also its "approximate scale," and if angles of view are material, a statement that these are correct. Every care should then be used to see that they are correct. Any "trespass" or other designation on the original, to which the defense could object as tending to prejudice the jury in advance, must be omitted.

As to land boundaries, the proclamation diagrams of the national forests can always be found in the biennial volume of the United States Statutes at Large, covering the year in which they were issued. Private land boundaries can be obtained from forest-service

status and verified and certified by the United States Land Office, if desired.

REPORT TO REGIONAL FORESTER

At the conclusion of all cases made the subject of law-enforcement investigation, whether carried to court or not, a report in accordance with Form 618b must be made and forwarded to the regional forester. This report is short and is the only one regularly required by the regional office to enable it to keep in record touch with the work. If the case is carried through the court by the investigating officer, this report will be complete; otherwise it will end where the case passed into the hands of the regional law officer, or was dropped.

PUBLICITY

Whenever this report is made, whether in connection with a memorandum for the regional law officer's consideration of a case or as final report of a case conducted by a field officer, the investigator should note special features that will help to make press publicity most effective. There are often angles in such cases which can be used to the greatest advantage and which only the man on the ground can supply. If he desires to submit direct copy for this purpose, so much the better.

PREPARING FOR COURT

PLANNING THE COURT CASE

When the case in court is to be conducted by the forest officer, he will need to plan in as much detail as possible every item in the procedure. This plan may, of course, be upset by unexpected moves on the part of the defense, but a plan definitely made in advance is the only basis of success. Such a plan can be changed to meet exigencies, but only wandering and oversight of critical needs can result from leaving each step to be planned as you go.

The plan should include:

1. Security of possible jurors, and of any whom you should try to remove by challenge if an advance line on the panel is possible.

2. Preparation of prosecution statement of the case. (See under "Court Procedure," p. 93.) If the accused is to plead guilty, this will be used as a statement of

the circumstances of the case, for which the justice generally asks to guide his sentence. If he does not do so, the prosecution should ask permission to make such a statement, unless it is reasonably certain that the court is already cognizant of and sufficiently impressed by all the essential features of the case. If leniency is recommended, on account of a confession, or of extenuating circumstances, minimum sentence should usually be asked. Reserve request for suspended sentence for very special merit; too many of these are dangerous.

If a jury trial will be necessary, the prosecution must also plan:

3. The exact order in which his witnesses should be called in building up the main case, and the questions which he will ask each one. When this is worked out in the rough, the whole should be studied in the light of the law of evidence so that mistakes may be avoided.

4. In connection with what can be learned of the probable defense of the accused, who his witnesses will be, and what they will testify to, the line of cross-examination must be worked out for each of his witnesses, in order to make the testimony accomplish as little for the defense and as much for the prosecution as possible.

5. Your own witnesses and their evidence in rebuttal, or for the purpose of impeaching witnesses for the defense, or of counteracting surprise defenses.

Every care should be taken not to let the defense get knowledge of your plans.

GETTING AND PREPARING WITNESSES FOR COURT

Subpenas, Etc.

The attendance of witnesses for preliminary hearing or trial is secured by means of subpenas, which can be issued by any magistrate having cognizance of the case. A witness may be arrested or bonded to insure his appearance in court; also, if the witness after having had the subpena served upon him does not so appear, he is in contempt of court and subject to arrest and all other penalties attaching thereto. Subpenas can be served only by handling them in person to the person for whom issued. They can, however, be served at any time of day or night. A subpena issued by a justice of the peace, unlike a warrant,

can also be served anywhere in the State, without the necessity of specific endorsement.

Do not use witnesses from the Forest Service any more than is necessary, especially if either justice or jurors are likely to be affected by hostility to it or its work. Select for witnesses persons of as high reputation as possible, since the defense will attack them if it can.

Preparing Witnesses

A definite understanding must be had with each prosecuting witness as to exactly what he will testify to, based both on what he can testify to and on what portion of this you will want him to testify to. His testimony must then be gone over, to insure both that he will tell the exact facts and that his statements will not be open to objections by the defense, which might destroy the effectiveness of the evidence as well as mix up the witness; but care could be taken to avoid anything that can be misconstrued as "coaching," or "framing" of evidence. In connection with this work certain points are always legitimate, and should be clearly impressed upon witnesses.

1. On direct examination they should only answer questions, not explain. This will let the questioner be the judge of what and how much shall be said.

2. Except when it is based upon a written record, which can be referred to in court, testimony should not be too exact, especially as to time, but should be qualified by some such phrase as "to the best of my recollection." This will prevent giving a loophole for its discrediting by the defense on any points of non-essential exactness. If exactness is required on any point, see that you have a record to make it so.

3. When testifying from a notebook or other record do not read word for word, but let the record be referred to as a guide or help to the memory on details. This is always permissible, whereas direct reading may raise annoying objections to the admission of the record in evidence.

4. Photographs must be introduced in evidence by the person who made them. Enlargements must be accompanied in evidence by the originals from which they were made.

Other points may need attention, of which the following may be mentioned:

5. Testimony of conversations at second-hand cannot be used in court.

6. Testimony respecting a confession should usually relate the conversation and the fact that it was voluntary, without referring to it as a confession, or to the signed statement, unless, or until, the examiner desires so to bring it in.

7. Testimony on matters requiring expert opinion necessitates the qualifying of the witness, and the basis of this qualification should be definitely determined.

A scientific expert usually tells the attorney what he has, and submits a list of questions, then together they decide upon the ones to use. The materials upon which expert testimony is based must, of course, first be placed in evidence by the witness who found them. In respect to fingerprints, for example, a forest officer should testify that he found the given article, suspected it to show such prints, developed them, and later obtained the prints of the suspect. But no non-expert witness will be allowed to testify as to similarities or any other matter of opinion or conclusion. If it has not been possible to get expert evidence as to identification, the matter will have to be left there, for the jury to study and draw their own conclusions, except that the attorney or other person conducting the prosecution can take up the subject later in his argument to the jury, and, if he has not been able to bring on an expert witness to testify to such matters, he may then draw out what would otherwise have been covered by them. This, of course, is a less effective method than to have the identification covered by actual testimony.

8. Guard, as far as possible, against opinions by your own witnesses that the accused was drunk when the offense was committed or that he is a monomaniac (that is, in respect to setting fires). These constitute possible defenses which will be seized upon by the opposing side. If on their own motion they set up such a defense, every means should be used to counteract its effect on the jury, either by impeaching such testimony or by strengthening elements of the case showing moral responsibility. When such a defense is probable prepare for it beforehand.

A case against a female defendant, or anyone with a bodily infirmity, must be exceptionally strong, since juries are easily swayed by sympathy in such cases.

Every precaution should be taken to minimize the effect of possible appeals to such sympathy.

AMENDMENT OF COMPLAINT

Should it be found, after all preparation has been made, that, for any reason, such as the failure to obtain a witness, the sustaining of some count will be impossible or improbable, or if at any time the complaint is found to be defective, application can be made for its amendment or for the issue of a new one. The latter usually involves fewer difficulties.

PRELIMINARY HEARINGS

In Federal cases action is better commenced on misdeameanors by an information filed in the Federal court by the United States attorney rather than by an indictment; in the case of felonies, action must always be commenced by indictment by a grand jury. The binding over to a grand jury of a prisoner previously arrested necessitates a preliminary hearing to determine whether he shall be so bound or be dismissed, unless the prisoner waives the hearing. If he has an attorney or knows his own best interests, he will not waive it.

Preliminary hearings are undesirable, from the standpoint of the prosecution, for three reasons: (1) The prosecution must state its case, with witnesses, and thus show its hand, while the defense need not show anything; (2) the prosecution is thus under the expense of producing its witnesses one more time than would otherwise be necessary; and (3) the commissioner or magistrate, if unfavorable to the case, or perfunctory, can dismiss the accused intead of binding him over for trial. Such dismissal does not prohibit his being brought to trial through other means, but it is a hindrance which should not be invited. Unless immediate arrest of the criminal is necessary, as discussed under "Warrants," the facts in Federal cases should first be submitted to the district law officer, who will, if the evidence warrants, initiate proper action through the United States District Attorney, and thus avoid the preliminary-hearing complication. Arrest will then be made by the United States marshal after the indictment is secured.

Chapter XII.—THE CASE IN COURT

COURT PROCEDURE

Only the procedure in a justice's court, in which forest officers may have to conduct their own cases, will be discussed here.

ORDER OF PROCEDURE

1. *Arraignment.*—Reading of complaint and taking of the plea, which is oral. The defendant must be personally present when this is done.

2. *Impaneling the Jury.*—Unless a trial by jury is waived by consent of the parties in open court, the bailiff under instructions from the court summons 12 men to fill the jury box. Either party may examine the panel to ascertain whether there is cause for objection to any member thereof, and, if the jury is then satisfactory to both parties, it will be sworn.

Challenges.—Upon challenge for cause, any or all may be excused by the court, if the cause alleged be deemed sufficient in the opinion of the court. The causes for challenge are numerous and are set out in sections 1071 and 1074 of the Penal Code. It is sufficient here to indicate briefly the more important, which are: Lack of any of the qualifications prescribed by law; unsound mind; previous conviction of a felony; bias. The first and third would many times be only ostensible causes. The most vital cause is really bias. This may result from relationship to or friendship for the accused, or interest in the outcome of the case, antagonism to the Forest Service or to forest officers concerned or to fire or game prosecutions, or belief in burning as advantageous, etc.

Of peremptory challenges the prosecution is entitled to *five*, for which no cause need be shown, and the defendant is entitled to *ten*. Since peremptory challenges are limited in number challenge for cause should always be exhausted first. In making a peremptory challenge simply say to the court: "I should like to have John Doe excused"; never say "I challenge John Doe."

3. Opening statement of the prosecution to the court and jury, outlining briefly what the case is and in general terms what the prosecution expects to prove in such a way that the case will be clear to the jury. This is extremely important.

4. Introduction of evidence by the prosecution, each witness for the prosecution being examined in the following order:

(*a*) Examination-in-chief, or direct examination, by the prosecution.
(*b*) Cross-examination by the defense.
(*c*) Reexamination by the prosecution.

5. Prosecution rests its case.

6. Statement by the defense of its case, with a brief outline of what it expects to prove.

7. Introduction of evidence by the defense, each witness for the defendant being examined in the following order:

(*a*) Direct examination by the defense.
(*b*) Cross-examination by the prosecution.
(*c*) Reexamination by the defense.

8. Rebuttal, if any, by the prosecution.

9. Argument; prosecution opens, then defense, then the closing by the prosecution if it so desires.

10. Charge to the jury by the court.

11. Verdict of jury.

12. Sentence, or discharge of defendant.

EXAMINATION OF WITNESSES

DIRECT EXAMINATION, OR EXAMINATION-IN-CHIEF

Witnesses are directly examined by the side for which they appear, to elicit the truth about the matter involved in the case, or so much thereof as will be calculated to benefit the case of the party calling the witness. One should know just what facts can be proven by the witness and ask only such questions as are necessary to bring out those facts. Never ask a question without a definite object, and when the witness has given the testimony for which he has been called discontinue the examination at once. Endeavor to put a favorably disposed witness at his ease. Adopt a friendly and respectful manner and begin by asking a few simple questions, such as name, place of resi-

dence, and business, in an ordinary conversational tone, giving the witness time to collect his ideas and get over the natural embarrassment which most persons feel when first put upon the stand. Then direct his mind to the matter about which his testimony is required, and after starting him on the right track let him tell his story in his own way, with no more interruption than is necessary, since interruptions tend to confuse and irritate a witness.

If it is necessary to call a hostile witness, adopt a more positive manner and endeavor to make him state just as much as is required and no more. All attempts at explanation should be stopped by telling him that he will have an opportunity to explain as soon as he has answered the question. If the hostility of the witness is made apparent to the court, he may permit leading questions (in which the answer is indicated by the question) to be asked in the examination-in-chief, although ordinarily one is not allowed to ask his own witnesses leading questions.

In introducing a map as evidence, if objection, which cannot otherwise be overcome, is raised by the defense on the score of accuracy, state that you merely wish to introduce the map to illustrate the witness's testimony.

CROSS-EXAMINATION

The witness under cross-examination is of the opposing side; he is presumably adverse and is likely to say something damaging if given the opportunity. Therefore, the rule never to ask a question without a definite object is doubly important. Indirect or camouflaged questions are of the greatest service in cross-examination, to drag out facts which the witness will be on his guard against admitting.

The principal things to be guarded against in cross-examining are: (1) Permitting the witness to supply any omissions which he may have made in his testimony-in-chief; (2) permitting him to explain any apparent inconsistencies that he may have fallen into; (3) allowing him to repeat and emphasize his testimony given on direct examination; (4) asking any question which will give the opposing counsel opportunity to bring out on reexamination some unfavorable testimony which would not have been admissible but for the injudicious question put during the cross-examination.

It is well to learn all you can about the history of the witness you expect to cross-examine, as facts concerning his life or previous activities may enable you either to discredit his testimony or to bring out facts to help your own case. The main idea of the cross-examination is to discover the weak point or points in the witness to be cross-examined. If the witness has, on direct examination, told a story which is known to be or is evidently fabricated, such fabrication cannot be exposed by taking the witness step by step over the story as he told it on direct examination; but it may be done either by beginning to cross-examine concerning facts outside the story, or by skipping back and forth from one point in the story to another, or both, in order to disconnect his fabricated train of thought, if possible.

If a defendant denies on the stand a confession introduced by your witnesses, his signed confession may be introduced in rebuttal, first having laid the foundation by asking the defendant if he did not sign a confession. If he denies the confession and signature, the following procedure may be adopted. First, appear to pass over the matter; then later casually ask the defendant to write on a paper a number of apparently meaningless words, such a "cat, dog, car, land, stone". Some of the words included, however, should have initial letters and certain syllables which are the same as corresponding elements in the defendant's signature. At the end the defendant should be asked to sign his name. If he has written his usual signature, it is then immediately introduced for comparison by the jury with his signature appearing at the close of the confession. If he has been shrewd enough to suspect a ruse, and has disguised his signature to the list of words, this fact can be demonstrated by comparing the signature with the corresponding syllables and letters appearing in the words themselves, and also by showing that the latter do correspond with his confession signature.

REEXAMINATION

This is for the primary purpose of repairing any damage which opposing counsel may have done to your case in his cross-examination of your witness. Advantage is, of course, taken of the opportunity to strengthen one's own case in any particulars in which

the need for it may have become apparent and in which it is possible to do so; but no new matters may be introduced, unless the opposing side has opened the way for them in questions on cross-examination.

REBUTTAL, ETC.

Rebuttal testimony, as the name implies, must be based on testimony already introduced by your opponent, which it is desired to refute or nullify. Additional testimony regarding a confession which the defendant has denied on the stand can, for example, be introduced in rebuttal. In such a case, a witness on your side can then be asked the direct question whether he remembers a given conversation or statement. But no new material, that is, matters for which the way had not been opened by preceeding testimony, can be introduced.

One of the common methods of rebuttal is the impeachment of opposing testimony. The credit of a witness may be impeached in four ways: (1) By disproving, by the testimony of other witnesses, any facts stated by him which are material to the issues on trial; (2) by proof of his having made statements out of court not in harmony with his testimony (this being usable only if you have first laid the necessary foundation by interrogating the witness, in the cross-examination, about such contradictory statements); (3) by proof of any facts showing a bias or prejudice on the part of a witness in favor of the party by whom he was called, or against the prosecution (such as relationship, sympathy, or interest in the outcome of the case); (4) by general evidence affecting the witness's character for veracity.

DIRECT AND REEXAMINATION BY OPPOSING SIDE

During direct examination, or reexamination, of their own witnesses by the opposing side, attention must be given to all the questions and answers. Notes taken of the testimony are very helpful for one's own cross-examination of opposing witnesses, as well as for one's argument to the jury if such an argument is to be made.

OBJECTIONS

The strictest attention to questions is necessary during examination of their own witnesses by the opposing

side, both to see that they are properly put and to ascertain their design; and to the answers, so as to consider their effect, and to prevent any objectionable testimony being received without exception being made to it. Good judgment and great quickness of perception are necessary, as well as familiarity with the law of evidence. The making of too frequent and too frivolous objections, especially when they are overruled, is likely to have a bad effect on the jury; on the other hand, many a case has been won by skill in invoking and enforcing objections at the right moment.

Improper questions must be objected to before they are answered. If, however the question be one which does not necessarily call for incompetent testimony but such testimony is in fact given in reply thereto, objection should be made, not to the question but to the answer, or to such part thereof as may be incompetent or irrelevant, as soon as this fact becomes apparent. When a question calls for evidence which may or may not be competent, the opposing counsel has a right to interpose and cross-examine the witness upon points material to the competency of his proposed answer, and when a question calls for evidence which may or may not be relevant, the questioner may be required to state beforehand the purpose of such testimony in order that its admissibility may be determined. Leading questions need not be objected to unless the answer which they suggest is material to the case and objectionable to the opposing side. In merely formal or introductory matters leading questions are not only unobjectionable, but rather desirable, as calculated to save time by bringing the witness to the point at once.

Objections to questions need not ordinarily be made to the court in the first instance, but rather by a good-natured caution to the opposing counsel. If he persists in offending along the same line, direct appeal to the judge is in order.

Chapter XIII.—THE LAW OF EVIDENCE

The rules as to what facts may be presented in evidence, how they may be presented, and their effect, constitute the law of evidence.

The general rule is that evidence, to be admissible in court, must be (1) relevant, that is, directly related to or connected with the "facts in issue" (see below); (2) competent, that is, the proper kind of evidence by which to prove any relevant fact alleged; and (3) material, that is, having a direct bearing and not raising collateral issues.

FACTS ADMISSIBLE IN EVIDENCE

FACTS IN ISSUE

In a criminal case whatever facts must necessarily be considered by the court in determining whether the accused is guilty are relevant, and evidence as to their existence or nonexistence may be introduced. Such facts are said to be "in issue." For instance, in the trial on an indictment of the accused for willfully setting on fire certain timber, underbrush, and grass on the public domain, the following facts are necessarily involved, that is, are "in issue," and may be proven: (1) that there was a man-caused fire at a certain time and place on the public domain, by which timber, underbrush, and grass were burned; (2) that this fire was set or caused to be set by the accused; and (3) that in doing this the accused acted willfully.

FACTS RELEVANT TO THE ISSUE

Facts not themselves directly in issue but which, being proved to the court, would establish conclusively the existence or nonexistence of the facts in issue, are called "facts relevant to the issue" and may always be given in evidence. This is circumstantial evidence. All facts so connected with a fact in issue as to form a part of the same transaction or subject matter (for instance, statements explaining an act and made simultaneously therewith);

or as constituting a probable cause for it (as that the accused did or did not have any motive, or that he did or did not make any preparation for doing it); or as the natural effect of it (as where the subsequent conduct of the accused was such as to be apparently influenced by his having done the act); or as necessary to explain or introduce it, are admissible. Such facts are called in legal parlance "res gestae."

When, however, facts offered do not furnish conclusive proof of the facts in issue, but merely render their existence or nonexistence more or less probable, it is within the province of the judge to say whether they may be admitted. But the judge's discretion in this connection is subject to certain established rules, by which some classes of facts are always excluded.

CHARACTER, HEARSAY, OPINION

It is the general rule that character, hearsay, and opinions are irrelevant and not admissible except in certain instances.

The fact of a person's having a good or bad character is not admissible in evidence as the ground for an inference that he did or did not do a certain thing, except that in criminal cases the accused may show that he has a good character as a fact from which the jury may infer that he is not guilty. When this fact of character is put in evidence by the accused, it may be contradicted like any other fact; and the prosecution may show that he has not a good character by proof that he has a bad one. The admission of this evidence in rebuttal is in accordance with the principle stated under "Production and Effect of Evidence."

Hearsay is commonly held not to constitute evidence because (1) it has not been made under the moral obligation of an oath, with the liabilty to criminal prosecution in case of falsehood; (2) the accused has had no opportunity of cross-examining the original witness in order to elicit his sources of information, as well as any facts which he may not care to disclose, and to test the general accuracy of his statements, and to show whether he has any bias; and (3) the original testimony has not been given in open court where the jury might observe the demeanor of the witness while giving it.

There are certain exceptions to the rule excluding hearsay, the most important of which, from our standpoint, are: (1) where it is rendered necessary by the difficulty of other proof (for example, statements of a dying person); (2) where the circumstances under which hearsay statements are made furnish some guaranty of their reliability other than the fact of having been made; (3) where such statements are in the nature of confessions or admissions (which may or may not constitute hearsay). An admission, in general, may be either (*a*) a direct statement of main facts in issue, or (*b*) a statement, or act, from which inferences may be drawn as to main facts in issue. The direct statement, in criminal cases, of complicity or guilt in respect to main facts in issue is called a confession, and to be admissible it must be made voluntarily. No confession is considered voluntary if made under promise or threat from a person in authority. The term "admission" is usually restricted to involuntary statements, or acts (implied admissions), from which inferences can be drawn as to main facts in issue, and these are in the nature of circumstantial evidence. Statements which constitute confessions must be proved in the ordinary way by the introduction of testimony, oral or written, as to the language constituting the admission; and where they are also in the nature of hearsay, the precautions previously noted should be observed.

Opinion is usually not admissible in evidence, except by an expert duly qualified as such. Such qualification is established in the direct examination, simply by asking the witness whether he has had experience in the matter in question (as in tracking, for example), how much experience, over how many years, etc. This may be done immediately after the opening questions as to name, residence, occupation, if the testimony involving opinion is then desired; otherwise, whenever the point in his testimony is reached where it is desired to introduce the latter. The questions designed to bring out the testimony of opinion can then be proceeded with. It is not necessary to make any formal statement of intention to qualify the witness as an expert. If the qualification as an expert has inadvertently been omitted, opposing counsel will doubtless object as soon as questions involving opinion are introduced, whereupon the qualification as an expert

can be made, and the evidence in question admitted by the court if the qualification be deemed sufficient by him.

KINDS OF PROOF BY WHICH FACTS IN ISSUE MAY BE ESTABLISHED

FACTS REGULARY PROVEN

It is the general rule that courts in deciding issues of fact will consider only such evidence as may have been presented by the respective parties and will entirely disregard all facts not regularly proven. To this rule there are two exceptions, the first being as to certain facts of which the courts take "judicial notice," or recognize as within their own knowledge without requiring any proof thereof, the second being as to such facts as are formally admitted by both sides. The latter class is not of so much importance in criminal cases as in civil actions, where a mutual agreement on such points may materially reduce the ground necessary to be covered by proof.

PRIMARY AND SECONDARY EVIDENCE

Ordinarily the most natural and satisfactory method of proving the existence or nonexistence of any fact is by the direct oral testimony of witnesses; but to this there are certain exceptions. Oral evidence may not ordinarily be given of any transaction of a public nature of which the law requires a record to be kept. For example, judicial proceedings must be proved from the records of the court and not by the oral testimony of persons who were present at the trial. The contents of a written instrument ordinarily can only be proved by production of the document itself. The terms of a contract or grant which the parties have reduced to writing and which it is sought to prove by one of the parties must be proved by production of the document itself, except in certain cases. The general rule is that all facts must be proved by the best kind of evidence obtainable, called "primary evidence"; but under certain specified circumstances the proof of the contents of writings is permitted—as when the original has been destroyed—by means of copies, oral testimony, etc., called secondary evidence.

Along with oral testimony there may also be produced in evidence and identified by the witnesses various things other than documents which it is desired to have the jury inspect. Such documents and objects are designated as "exhibits."

PRODUCTION AND EFFECT OF EVIDENCE

As to parties by whom proof must be produced, it is obvious that the suitor who relies upon certain facts should be called upon to prove them. The general rule is that the burden of proof is upon the party who asserts the affirmative of the issue. In a criminal proceeding the burden of proof is upon the prosecution, which, in order to obtain a conviction, must prove the guilt of the accused beyond a reasonable doubt. The prosecution must produce its evidence first, and must exhaust its evidence in the first instance; that is, the prosecution may not first rely upon a prima facie case and, after that has been shaken by the proof offered by the accused, call other evidence to confirm it. After the accused has concluded his proof, the prosecution can bring in further evidence only for the purpose of contradicting the affirmative facts brought into the case by the accused, and may not attempt to prove his guilt by evidence of a state of facts different from that offered in the first instance.

Thus, if in the trial on an indictment of the accused for willfully setting on fire certain timber, underbrush, and grass on the public domain, evidence be offered that the accused set certain lenses designed to concentrate the rays of the sun on a bunch of matches surrounded by inflammable material, and that thereafter the fire occurred; and should the accused then offer evidence to the effect that the so-called lenses were defective and would not concentrate the rays of the sun, the prosecution could attempt to contradict this evidence of the accused, but could not offer evidence tending to show that the accused, after observing the failure of the lenses, returned and started the fire with a torch.

COMPETENCY OF WITNESSES

All persons offered as witnesses are presumed to be competent to testify until the contrary is shown to

the satisfaction of the court. Objection to the competency of a witness must be made before his examination-in-chief if the disqualification is then known to the party objecting, or if it is not then known, the objection must be made as soon as the disqualification appears. A witness may be incompetent owing to lack of mental capacity arising from extreme youth, disease, intoxication, or other cause. The defendant in a criminal case is a competent witness in his own behalf, but cannot be compelled to testify. A lawyer is not permitted, except with his client's express consent, to testify as to any confidential communication made to him by or on behalf of his client during the course and for the purpose of his employment. Husband and wife are not permitted to disclose confidential communications made to each other during marriage, even if the marriage has since been terminated by divorce or the death of one of the parties. Under the California law neither the husband nor the wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or in cases involving violence upon one by the other and those involving failures to support the wife or child.

APPENDIX A

EQUIPMENT

Speed in get-away will often be as essential in the criminal detection work as in fire suppression. Complete equipment should be kept in a carrying case reserved for this purpose. The only way to insure its completeness is to look over and replenish equipment *when you return* from a case, and not leave it until you want to start again. Have a list of what should be there pasted on the inside flap of the case.

Equipment should include:

Law enforcement handbook.

Fish and game code.

Field notebook, pencils (one hard drawing), fountain pen (if available), writing paper, and a few envelopes, forms (expense, etc.).

Maps (general location) and square-ruled paper for making local sketches.

Compass (F. S., or else box and Abney level), pocket steel tape or light rule.

The above, except for the fountain pen, may be obtained on requisitioning through the supervisor.

Fingerprint equipment kit containing the following:

1 small ink pad.
1 ounce black powder.
1 ounce white powder.
1 ounce red powder.
1 ounce blue powder.
1 camel's hair brush.
1 roll cellulose tape.
1 magnifying glass.
1 set small record cards.

The above kits may be obtained on requisition through the regional office for approximately $8.

Footprint equipment kit containing the following:

1 water spray gun (14-inch barrel).
5 pounds plaster of paris (dental).
1 flour sifter (small).

1 pan (small).
1 spoon (large, table).
1 canteen (gallon).

The above materials may be obtained locally.

Cleaned gloves for fingerprint work.

Camera and tripod are often of very great value. They should be included in the equipment when they are available. Films used for privately owned cameras in official work may be purchased officially. (See supervisor for procedure.) In order that reimbursement may be made in the event of damage to privately owned cameras used in official work, application should be made through the supervisor for a contract of hire by the Forest Service.

The attachment called Universal clamp and tripod head, which permits attachment of a camera to boards or other supports at any angle, will be furnished on requisition for official use.

APPENDIX B

FEDERAL COURTS AND UNITED STATES COMMISSIONERS

The State of California is divided into Federal judicial districts as follows:

NORTHERN DISTRICT

Commissioners in this district are located at Alturas, Dorris, Marysville, Red Bluff, San Francisco, Monterey, Stockton, Eureka, Covelo, Hollister, Jackson, Sacramento, and Willits.

Divisions.—For Federal court purposes the northern district is divided into:

Northern division.—Comprising the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, Eldorado, San Joaquin Amador, Calaveras, Stanislaus, Tuolumne, Alpine, and Mono.

Court is held at Sacramento second Monday in April and first Monday in October, and at Eureka third Monday in July.

Southern division.—Comprising the counties of San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, and San Benito.

Court is held at San Francisco first Monday in March, second Monday in July, and first Monday in November.

SOUTHERN DISTRICT

Commissioners in this district are located at Riverside, San Diego, Fresno, Bakersfield, Los Angeles, San Bernardino, Fresno, and El Centro.

Divisions.—For Federal court proposes the southern division is divided into:

Northern division.—Comprising the counties of Fresno, Inyo Kern, Kings, Madera, Mariposa, Merced, and Tulare.

Court is held at Fresno, first Monday in May and second Monday in November.

Southern division.—Comprising the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.

Court is held at Los Angeles, second Monday in January and second Monday in July; and at San Diego, second Monday in March and second Monday in September.

APPENDIX C

FORM OF LEGAL PROCESSES

It is well for the forest officer to be familiar with the proper forms of the legal processes with which he will have to do. Warrants, subpenas, etc., however, will be prepared by the issuing magistrate and the forest officer will have no direct responsibility for their form; he will need only to be sure that they properly state the facts of the case, which he must have stated properly in his complaint (see p. 76). The correctness of the latter only his knowledge and care can insure, and he must therefore be thoroughly familiar with its requirements. On any doubtful points,

especially of form, the magistrate will doubtless be glad to give him assistance; but he should not be entirely dependent on such help.

COMPLAINT

The following is an accepted form. The letters (*a*), (*b*), etc., inserted in the blank spaces refer to illustrative wording for different kinds of cases, following. These, however, should not be followed verbatim unless they fit the individual case; every case should be stated on its own merits.

IN THE JUSTICE' COURT

_____ TOWNSHIP, COUNTY OF_____

STATE OF CALIFORNIA

The People of the State of California
_____.Plaintiff
vs. } Complainant-Criminal
_____.Defendant

P. C. Secs. 806, 809, 1425

Personally appeared before me, this_____ day of _____ 19 ____, _____ of _____ in the county of _____ State of California, who, first being sworn, complains and says:

That _____ (*a*) _____ (*b*) _____ of _____ on the _____ day of _____ 19____, and before the filing of this complaint, at _____ in the said county of _____ State of California (*c*) _____ (*d*) _____ (*e*) _____ (*f*)_____ _____ _____ all of which is contrary to the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

_____

Said complainant therefore prays that a warrant may be issued for arrest of the said_____ and that _____ he _____ may be dealt with according to law.

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

Justice of the Peace of said Township.

ILLUSTRATIVE WORDING

(*a*) John Doe of Peanut, California.

(*b*) John Doe of Peanut, California, and Richard Doe of Milpitas, California.

(*c*) Did in violation of subsection 1 of section 384 of the Penal Code of the State of California set fire, or cause or procure fire to be set, to forest, brush, and other inflammable vegetation growing on lands not his own without the permission of the owner of such lands, to wit: the SE. SE. section 2, T. 23 N., R. 11 W., M. D. M.

(*d*) Did in violation of subsection 2 of section 384 of the Penal Code of the State of California allow a fire to escape from his control, he having charge thereof, and spread to lands not his own, to wit: the SE. SE. sec. 2, T. 23 N., R. 11 W., M. D. M., without using every reasonable and proper precaution to prevent such fire from escaping, whereby timber, brush, and other inflammable vegetation on said lands were burned.

(*e*) Did in violation of subsection 3 of section 384 of the Penal Code of the State of California burn brush, logs, fallen timber, and grass on his own land without taking every proper and reasonable precaution to prevent the escape of the fire, whereby said fire did escape and spread to the lands of another, and did burn timber, brush, and other inflammable vegetation on such lands.

(*f*) Did in violation of subsection 4 of section 384 of the Penal Code of the State of California leave a fire burning and unextinguished upon departing from a camp or camping place in the SE. sec. 2, T. 23 N., R. 11 W., M. D. M.

AFFIDAVITS

A complete and satisfactory form is as follows:

STATE OF CALIFORNIA,
*County of*_____*ss.*
John Doe, of_____being first duly sworn, deposes and says:

_____
_____
_____

Signed_____
(Affiant.)

Subscribed and sworn to before me at_____ this _____ day of_____ 19____

_____
Forest Ranger.

If the statement to which affidavit is desired has already been written, or if it seems undesirable, on account of the effect on the witness, to begin the written

statement with the formality of an affidavit (see p. 109), the form of oath only following the signature of the affiant, will be sufficient.

APPENDIX D

OUTLINE FOR LAW ENFORCEMENT INVESTIGATION REPORT

When reporting trespass cases to the regional forester for action, reports should be compiled in accordance with Form 874–20, Outline for Report on Trespass.

Each field man should keep a copy of the above form fastened in the back of his law-enforcement handbook for convenient reference in compiling trespass reports.

A clear, concise, and understandable report always reflects credit on the author, while a poorly compiled report is an indication that the investigation was probably of the same type. A sloppy or poorly compiled report will dampen the ardor of the prosecuting attorney and may suggest side-stepping the issue, while a well prepared report will capture his interest.

The following suggestions should be adhered to in compiling reports in accordance with this form:

1. (*1*) *Full name, etc.*—In addition to what is called for under this caption, a complete description of the trespasser should be set forth; i. e., nationality, married or single, dependents, age, height, weight, eyes, hair, habits (especially if peculiar and have bearing on identification and apprehension), prior convictions (if known), and associates.

2. (*2*) *Synopsis of case.*—The synopsis of a report of this character has a very definite function; i. e., to give the reader a complete and definite history of the case, in as brief a form as possible. He is thus enabled readily to understand and connect up in his mind each important point set forth as the body of the report is read.

3. (*6*) *Damages.*—Costs are called for in the instructions set forth under this caption. However, this item should be shown under a subcaption as "6a. Costs" in such a manner that it is correctly itemized to show a subtotal which can be conveniently added

to the subtotal of damages to constitute a grand total of damages and costs. In criminal cases this needs only to be an approximate figure unless the data are readily available. If civil action is anticipated, the information will have to be accurate and detailed.

4. All trespass reports should be approved by the supervisor. Reports containing more than six pages should be indexed to facilitate ready reference.

5. When important trespass reports are sent to the regional forester for civil action, five copies should be furnished. This will eliminate the necessity of making extra copies in the event the case has to be referred to the Chief, Forest Service.

6. *Form 618 B.*—In addition to what is shown on page 88 and in all cases other than fire, two copies of this report are required in the regional office. The original is for the division indicated in the designation, and the copy should be marked for information of Fire Control, where most law enforcement cases are centralized.

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